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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1877. No 437

RUSSELL SAGE, JAMES BUELL, AND N. A. COWDREY,
INTERVENORS, APPELLANTS,

vs.

THE CENTRAL RAILROAD CO. OF IOWA ET AL.

EXTRACTS FROM RECORD.

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Dismiss

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Afterwards, to wit, on the 27th day of August, A. D. 1874, the said complainants, by their said attorneys, filed in said clerk's office in said cause their amended and substituted bill of complaint, which said bill is in the words and figures following, to wit:

Amended and Substituted Bill.

In the Circuit Court of the United States for the District of Iowa, October Term, 1874.

CHARLES ALEXANDER, A. V. LYNDE, AND OTHERS,
against
THE CENTRAL RAILROAD COMPANY OF IOWA AND the Farmers' Loan and Trust Company of New York, Trustees.

To the Judges of the Circuit Court of the United States for the District of Iowa.

1. Charles Alexander, E. B. Page, and A. W. Spencer, of the city of Boston, and A. V. Lynde, of Milrose; Sophie W. Dana, of Brookline, who are all citizens of the State of Massachusetts; Elijah Colburn, of Nashua, and Joseph Wentworth, of Concord, citizens of the State of New Hampshire, and Nathaniel Holmes, of the city of St. Louis, a citizen of the State of Missouri, who sue in behalf of themselves and other numerous parties, as hereinafter shown, bring this their bill against the Central Railroad Company of Iowa, a corporation duly organized and established, and existing under the laws of the State of Iowa, and a citizen of said State of Iowa, and against the Farmers' Loan and Trust Company of New York, a corporation duly organized and established and existing under the laws of the State of New York, and a citizen of said State of New York. And thereupon your orators complain and say:

2. That heretofore, to wit, on the 15th day of July, 1869, the said Central Railroad Company of Iowa, defts., desiring to obtain

money with which to construct, build, and equip a certain railroad within the said State of Iowa, as hereinafter set forth, and being thereunto lawfully authorized, duly made, executed, and delivered unto the said Farmers' Loan and Trust Company of New York certain first-mortgage bonds of the said Central Railroad Company of Iowa, for the sum of $3,776,000.00, payable to the said Farmers' Loan and Trust Company, or bearer, on the 15th day of July, 1899, in United States gold coin, at par, with interest in gold coin, as aforesaid, at the rate of seven per cent. per annum, payable semi-annually, free from United States government tax, on the 15th days of January and July in each year, on presentation of the respective coupons thereto attached, both principal and interest being payable at the office or agency of said railroad company in the city of New York, said series of bonds being of the denomination of five hundred and one thousand dollars each; a copy of one of said bonds is hereunto annexed, marked "A," and made part of this bill; the same being precisely like all the others of said bonds, save numbers and denomination, and having annexed thereto sixty several interest-coupons to fall due at the dates aforesaid, calling for the sum of thirty-five dollars each; all of said coupons being precisely alike save numbers, amounts, and time of maturity; one of the same by copy being a part of said exhibit "A;" said bonds being duly signed by said railroad company's president and secretary, countersigned by its treasurer, and the certificate thereon printed signed by the authorized officer of said Farmers' Loan and Trust Company of New York.

3. That on the 9th day of September, 1869, the said Central Railroad Company of Iowa, being thereunto lawfully authorized, for the purpose of securing the payment of said bonds at the several dates when the principal and interest thereof should fall due to the holders and owners thereof, made, executed, and delivered unto the Farmers' Loan and Trust Company of New York, as trustees of the holders and owners of the bonds aforesaid, and to said trustees' successors, one certain mortgage or deed of trust of the entire corporate property of the said Central Railroad Company of Iowa, and all its franchises and privileges, then held and acquired, or to be thereafter constructed or acquired, extending from a point in Davis county, on the south line of the State of Iowa, at the intersection of said line by the North Missouri railroad; thence to Oskaloosa, in Mahaska county; thence northerly to Marshalltown; thence to Ackley, in Hardin county, and thence northerly to the north line of the State of Iowa, at a point to be thereafter determined, including all the right-of-way, road-bed finished and in process of construction, with all material collected for construction or operative purposes, depot-grounds, gravel-pits, quarries and real estate, station-houses, water-tanks, repair and machine shops, turn-tables, coal-houses and sheds, and all things of every name and nature belonging to said company; also, all machinery, locomotives, and rolling-stock, all

tools and supplies acquired or to be acquired, and the net income of said railroad company during the continuance of said trust.

A copy of which mortgage is hereto annexed, marked "B" (4.) That after the said deed of trust was filed for record in the offices of the recorders of the several counties through which the said line of railway extends, and the same was duly recorded in the said several counties of Iowa, as shown by the following schedule:

In the county of Davis, Sept. 16th, 1869.
" Appanoose county, Sept. 20th, 1869.
" Mahaska county, Sept. 17th, 1869.
" Monroe county, Sept. 17th, 1869.
" Jasper county, April 3d, 1874.
" Wapello county, Sept. 18th, 1869.
" Powsheik county, Sept. 17th, 1869.
" Marshall county, Sept. 10th, 1869.
" Hardin county, Sept. 10th, 1869.
" Franklin county, Sept. 11th, 1869.
" Cerro Gordo county, Sept. 13th, 1869.
And in Worth county, Sept. 16th, 1869.

5. That afterwards the said Central Railroad Company of Iowa, through its agent, negotiated, sold, and delivered unto your orators, complts., and to divers and sundry persons who are exceedingly numerous, and many of whom are unknown to your orators, a large number of the said first-mortgage bonds, *to wit*, amounting to the sum of $3,700,000.00.

6. That afterwards, on the 15th days of January and July, 1870, and in the years 1871 and 1872, when several installments of semi-annual interest, as evidenced by the coupons thereto annexed, fell due upon the said bonds, the said Central Railroad Company paid the same; but your orators further complain and aver.

7. That on the 15th days of January and July, 1873, and on the corresponding dates in the year 1874, large sums of the semi-annual installments of interest on said bonds for the six months preceding each of the said dates fell due, and thereupon a large number of the several owners and holders of the coupons representing said interest presented the same at the office and agency of the said Central Railroad Company of Iowa, in the city of New York, and demanded payment thereof, but the said railroad company thereupon neglected and refused to pay the same, and still does fail, neglect, and refuse to pay the same. And a large portion of the said interest due January 15th, 1873, and substantially all of the said interest which fell due July 15th, 1873, and January 15th and July 15th, 1874, still remains wholly due and unpaid.

8. Your orators further complain and represent that they and those in whose part and behalf this action is brought, as hereinafter stated, are the owners and holders of a large number of the said first-mortgage bonds, and of the coupons of interest due thereon; that is to say, they are the present holders and owners of said bonds

amounting to at least the sum of $329,000.00 thereof, at their par value, and of the coupons belonging therewith.

9. And your orators, further complaining, show that on the 15th day of April, 1871, the said Central Railroad Company of Iowa, def'ts, made, executed, and delivered unto the said Farmers' Loan and Trust Company of New York, certain second-mortgage bonds for about the sum of $925,000, payable to the said Farmers' Loan and Trust Company of New York, or bearer, on the 15th day of April, 1901, with interest in United States gold coin, free from government tax, at seven per cent. per annum, payable semi-annually on the 15th days of April and October in each year, on presentation of the respective coupons thereto attached at the office or agency of the said railroad company in the city of New York, said bonds being of the denomination of one thousand dollars each.

10. That on said 15th day of April, 1871, the said Central Railroad Company of Iowa, for the purpose of securing the payment of the said last-mentioned bonds at the dates when the principal and interest thereof should fall due to the owners and holders thereof, executed and delivered unto the said Farmers' Loan and Trust Company of New York, as trustees of the said holders and owners, a certain second mortgage or deed of trust of that date, of all the property, franchises, and privileges, acquired or to be acquired, by the said Central Railroad Company of Iowa, together with all machinery and rolling-stock and net earnings of the said railroad company, being in fact the same property theretofore included in the said first mortgage, the lien of said second mortgage being therein specially made junior and subject to the said first mortgage, which mortgage was also recorded in the several counties before named, but subsequent to the dates when the said first mortgage was recorded therein, and the said second mortgage is a second lien upon the said railroad and property.

11. That afterwards the said Central Railroad Company of Iowa negotiated and sold in the market a large number of the said second-mortgage bonds, amounting to about the sum of $925,000.00, and—

12. That, as your orators are informed and believe, nearly the whole amount of interest on said second-mortgage bonds which fell due April 15th and October 15th, 1873, and April 15th, 1874, is still due and unpaid, said railroad company being wholly without funds with which to pay the same.

13. Your orators further represent that on the 15th day of May, 1872, the said def'ts, the Central Railroad Company of Iowa, made and executed unto the said Farmers' Loan and Trust Company of New York, payable to them or bearer, certain third-mortgage bonds of the said Central Railroad Company of Iowa, for the sum of about $1,400,000.00, to fall due on the 15th day of May, 1902, with interest in gold coin, free from government tax, at seven per cent. per annum, payable semi-annually on the 15th days of May and

November in each year, on presentation of the respective coupons thereto attached at the office or agency of the said railroad company in the city of New York, said bonds being of the denomination of $1,000.00 each.

14. That on said 15th day of May, 1872, said Central Railroad Company of Iowa, for the purpose of securing the payment of the said last-mentioned bonds and the interest thereon at the several dates when the same should fall due to the holders and owners thereof, executed and delivered unto the said Farmers' Loan and Trust Company of New York, as trustees of said holders and owners, a certain third mortgage of all that property included in the said first and second mortgages, stipulating therein that the lien thereof was subject to the liens created by said first and second mortgages, which said third mortgage was recorded in several of the counties through which the said line of railway extends, but after the recording therein of the said first and second mortgages.

15. That afterwards the said Central Railroad Company of Iowa negotiated loans of large sums of money, and contracted certain considerable indebtedness in the purchase of cars on credit, depositing large sums of said last-described bonds as security for the payment thereof, *to wit*, about $500,000.00, upon which bonds no interest has been paid to this date.

16. Your orators further show that Isaac M. Cate, of Boston, Massachusetts, has for about two years last passed been one of the directors, and ever since April 15th, 1873, president of the said railroad company.

17. That John S. Gilman, Horace Abbott, and Thomas Kensett, of Baltimore, Maryland, have been directors of said railroad company ever since its organization. That A. L. Hatch, until a few days ago, treasurer, and G. E. Taintor and H. C. Fahnstock, all of the State of New York, have also been, and your orators believe still are, directors thereof.

18. That the said Cate, Gilman, Abbott, Kensett, Hatch, Fahnstock, and Taintor constitute a majority of the board of directors of said company.

19. That the said President Cate and the said other parties, directors, each holds large amounts of the floating indebtedness of the said railroad company, and (beside the bondholders) are the principal creditors thereof.

20. That D. N. Pickering is, and ever since the 15th day of April, 1873, has been the general superintendent of said railroad company, and has almost the entire management of said company's affairs in Iowa; that although the by-laws of said company require that the treasurer shall give bond in such sum as the directors shall order, no order has been made by them in that respect at the date of the filing of the original bill herein, nor, as your orators believe and charge, has any such order yet been made; nor was any such bond ever given by the said A. L. Hatch, treasurer, nor, as your

orators believe and charge, has any such bond ever been given by his successor in office.

21. That the said deft. railroad company's treasurer is continually absent in New York.

22. That the business properly pertaining to the said treasurer's office within this state is wholly managed by the said D. N. Pickering and his clerks, who are in the habit of receiving and paying out money belonging to the said railroad company and making no report of such receipts and expenditures to the treasurer.

23. Your complainant orators further represent that the said Central Railroad Company of Iowa, acting by its directors aforesaid, on the 10th day of June, 1873, caused to be issued and sent to all the holders of its bonds a certain printed circular which contained, among other things, the following statements:

24. The following is a comparative statement of the earnings and expenses for 1872 and 1873, namely:

March, 1872,	earnings.....		$42,301
	expenses.....	$42,750	
April,	earnings.....		42,405
	expenses.....	49,752	
May,	earnings.....		38,388
	expenses.....	48,402	
		*$140,904	$123,094

(On margin:) *See errors.

March, 1873,	earnings.....		$63,288
	expenses.....	$43,358	
April,	earnings.....		55,709
	expenses	38,715	
May,	earnings.....		52,000
	expenses.....	37,000	
		$119,073	$170,997

25. And the said circular also contained the following proposals and solicitations addressed to the bondholders of said Central Railroad Company of Iowa: "In order to obtain means for equipping this road it is necessary to ask the bondholders to extend the interest coming due during two years, until January 1, 1879, the coupons for the two years' interest to be placed with the Farmers' Loan and Trust Company at New York city, in trust, that company being the trustee for the bondholders, and script for these amounts payable January 1, 1879, with interest at 7 per cent. gold, payable semi-annually, to be given therefor, interest to be added to January 1, 1874, on coupons due April and October, 1873, and deducted from those coming due after that date, up to and inclusive of January 15, 1875.

26. Your orators further aver and show, with reference to the said circular, that the same was in the afore-mentioned statement of

comparative earnings and expenses of said railroad intended to be used and was used by said railroad company for the purpose of inducing these complainant orators, and the other of said bondholders, to extend the payment of said interest coming due for two years, until January 1, 1879.

And your orators further aver and show that the said table of earnings and expenses, together with other statements in said circular contained, were made the basis of an estimate showing that the net earnings of the said railroad were largely increasing, which estimate was therein made to said bondholders for the purpose of inducing them to extend the payment of interest as aforesaid, by a contract to that effect, and to tie themselves up, so that the said mortgages could not be foreclosed.

And these your orators further show and specifically charge that the said table and other statements of said circular were false in fact.

That instead of their having been net earnings of the said railway in May, 1873, of $15,000.00, there had been a loss of the sum $42.20. That instead of net earnings of said railroad during said period of three months of $51,924, the net earnings thereof were only about the sum of $27.499.00. That the said estimate of increase of net earnings, based upon said table, and other statements, were also false, and made with the intent to deceive and mislead your orators, and the others of said bondholders, and to induce them to extend the payment of said interest as aforesaid. That the said railroad company, in so composing and circulating said circular among these your orators, and others of the holders of the said bonds, conspired and confederated together to cheat, wrong, and defraud your orators, and the others of said bondholders, by inducing them to believe that the net earnings of the said railroad were much greater than they really were, and that such net earnings would increase in a much greater ratio than the facts known to said directors warranted them in so estimating and representing, and by inducing the said bondholders, including your orators, to grant an extension, as asked in the said circular, under the belief that by so doing your orators, and other bondholders, would realize their interest at an earlier day than they otherwise would.

27. And your orators further aver and show that a large number of the holders and owners of said first-mortgage bonds, including some of your said orators, and about one hundred of the others of such owners and holders whom your said orators represent, and upon whose part and behalf they bring this bill, believing said statements in said circular contained to be true and relying thereon were thereby induced to surrender their coupons to the said Farmers' Loan and Trust Company of New York, trustees, and to extend the payment of interest due and to become due thereon, as asked by said railroad company in said circular, and to receive in lieu thereof a scrip-interest certificate purporting to entitle the

holder thereof to the payment of semi-annual interest upon the sum of interest represented by said coupons; but that the said A. W. Spencer, Sophie W. Dana, and Joseph Wentworth did not so surrender their said coupons nor enter into the said contract of extension of the payment of interest.

28. Your orators further show that heretofore, to wit, on the 19th day of February, 1874, your said orators, or some of them, and numerous others of the holders and owners of the first-mortgage bonds aforesaid, and numerous holders of said second-mortgage bonds, having discovered that the said circular of June 10, 1873, was false and fraudulent as aforesaid, and being informed of misapplications on part of said railroad company of the net earnings of their railway in the payment of floating indebtedness, and of the general mismanagement of said company's affairs, and being very apprehensive and solicitous with regard to their interests in said railroad and property, held a meeting of the bondholders of the said Central Railroad Company of Iowa, pursuant to public notice, at Mionian Hall, Boston, Mass., to take counsel in relation thereto and to adopt measures for relief in the premises.

That the said bondholders' meeting was attended by the holders of a very large proportion of the first as well as of the second-mortgage bonds. That at said meeting great unanimity prevailed, and it was resolved that all parties in interest amicably join in a petition to the courts for a decree of foreclosure which shall give the first-mortgage bondholders the preference to which they are entitled, &c. The said meeting appointed your orators, the said Charles Alexander and A. V. Lynde, and also H. J. Boardman, a committee to carry out the recommendations made by said meeting. That the said meeting took such action with reference to said funding contract that the said bondholders disaffirmed and rescinded the same, since which time the holders of large sums of said second-mortgage bonds have sent to said committee their disaffirmance and rescision of the said contract of funding the said interest and authorized said committee to take such action as they deemed best to effect a foreclosure of the said first and second mortgage bonds. And your orators believe and state that before a decree can be reached in this cause, the holders of a majority in amount of the said bonds will have so disaffirmed the said funding contract and elected to join as parties plaintiff in this action for foreclosure.

29. Your orators further show that the said bondholders' committee afterwards called upon the proper officers of the said Farmers' Loan and Trust Company of New York and demanded that the said company as trustees of the said first-mortgage bondholders bring an action to foreclose the said first mortgage of the Central Railroad Company of Iowa; but although your orators then and there proffered to give to said trustees any and all such bond of indemnity against costs and damages as they might reasonably require, the said trustees alleging that they could not act unless a

majority of the bondholders requested it, positively refused so to do.

30. Your orators further show that one of the provisions of the scrip interest-coupons aforesaid was that if default should be made at any time in the payment of the principal sum thereof, or the semi-annual interest thereon, the bearer thereof should be entitled to receive from said loan and trust company the original coupons and pursue his remedy upon said original coupons.

31. That on the 1st day of July, 1874, divers of the holders and owners of the said scrip coupons, and divers of the holders and owners of the said original coupons of interest due on that day upon the said first-mortgage bonds presented the same at the office and agency of the said Central Railroad Company of Iowa in the city of New York, and then and there demanded payment thereof, but the said Central Railroad Company of Iowa then and there neglected, failed, and refused to pay the same, or any portion thereof, and still does so neglect, fail, and refuse to pay the same, and the said railroad company is wholly without funds with which to pay the interest due upon the said first-mortgage bonds.

32. Your orators further show that the net earnings of the said Central Railroad Company of Iowa, as shown by the reports of its officers, were, for the year 1872, were the sum of $140,000.00, and for the year 1873 the sum of $126,000.00.

33. That the said company's bonded indebtedness, inclusive of interest, is the full sum of $5,500,000.00 in gold, the portion thereof owing upon said first-mortgage bonds, including interest, being the sum of at least $400,000.00 in gold; that the rate of interest upon all the bonds of said company is rapidly increasing; that the affairs of said company are hopelessly involved, and that there is no reason for believing that the affairs of said railroad company will or can be improved under the present management thereof.

34. Your orators further aver that the affairs of the said Central Railroad Company of Iowa are managed in a very expensive and extravagant manner, in that the said company has kept and now keeps in its employ a large number of unnecessary and useless officers and employees, paying exorbitant salaries and compensation for their services. And in that the said company have hitherto made and are still making large and unnecessary disbursements of its gross earnings in the purchase and lease of locomotive engines and cars which are not needed for the successful operation of the said railway; owing to which reckless expenditures and other mismanagement of the said company, their disbursements for the six months immediately preceding the 1st day of July, 1874, exceeded the earnings by more than $2,000.00.

35. Your orators further show that a large proportion of the said Central Railroad of Iowa has been built only about three years, and the smaller and older portion thereof only about five years,

and that in consequence thereof no additions of new iron have been required and none in fact made.

36. That the wooden structures, ties, &c., being comparatively new, have required only light repairs, and even these have been inaccurately made.

37. Your orators further complain and represent that the said Isaac M. Cate, president, and John S. Gilman and Horace Abbott are nearly related to each other by marriage; that is to say, the said Cate and Gilman are sons-in-law of said Abbott; that, as your orators are informed and believe, the said Cate, Gilman, and Abbott believing that as an extension of the payment of interest had been secured as aforesaid, and the hands of said bondholders so tied up that a foreclosure could not be had, they could then procure judgments against the said railroad company for their respective portions of the said floating debt, and so secure liens for the same upon the said company's road and property which would have priority over the liens of the bondholders, employed the firm of Severs & Cutts, (said Severs being then and now vice-president of said company,) who commenced three several suits against said railroad company in the circuit court of Powsheik county, Iowa, on part of said Gilman, Abbott, and Cate; that said attorneys requested the said D. N. Pickering, general superintendent of said company, to go from Marshalltown, the place where said railroad company's offices are kept, to said Powsheik county, for the purpose of having the original notices of said suits served upon him; that the said Pickering went accordingly to the said county, and the original notices of said suits were were served upon him by a person not an officer; that said suits were brought at a place remote from the line of said Central railroad and were conducted with as much secrecy as possible, and such proceedings were had therein that a judgment was rendered against said company in favor of each of said parties by default, the same aggregating about $189,000.00; and the said parties thereupon caused transcripts of each of said judgments to be filed in nearly all the counties through which said line of railway extends, and in one or more of said counties, through some oversight, the said third mortgage had not been recorded, and in many of said counties the recording and indexing of said first and second mortgages had been so defectively performed that the said judgments are apparently a lien upon the said railroad and property superior to the lien of the said mortgages. Your orators further show that the said judgments were fraudulently obtained by the plaintiffs therein, with the knowledge and connivance of other members of the said company's board of directors.

38. That in at least one case, to wit, in the case of Isaac M. Cate vs. The Central Railroad of Iowa, in which action, the sum of $10,000.00 and interest was claimed upon an order of the said company drawn upon said Isaac M. Cate, which sum and order had long theretofore been paid to said Cate, notwithstanding which pay-

ment in full the said sum so paid entered into and now forms a part of said judgment.

39. And your orators believe and aver that the said Cate, Gilman, and Abbott intend to proceed to collect the said judgment by distress and sale of some of the said railroad company's property included in the said mortgages.

40. Your orators further aver and specially charge that the said railroad company have made repeated fraudulent preferences in the payment of their indebtedness, and have frequently misapplied their gross earnings to the payment of their floating debt, paying off and discharging coupons of the said second-mortgage bonds, while at the same time failing and refusing to pay off and discharge coupons of the said first-mortgage bonds, and by applying said gross earnings in payment of many other debts having no priority nor lien whatever, but to which the claims of your orators are and were senior and superior.

41. Your orators further show that while the said company have so as aforesaid been misapplying their earnings to the payment of floating indebtedness, they have fallen largely in arrears in the payment of workmen and operatives engaged in and about the operating of the said railway, so that at this date their indebtedness upon said account is at least $100,000, a part of which sum has deen due ever since August, 1873.

And said railroad company has been in the habit of issuing acceptances to said laborers and employees for their services, and giving as reason of non-payment that there are no funds on hand.

42. Your orators further aver that the said railroad company has leased of the said Cate, pres't, and Gilman, Abbott, and Kensett, directors of said company, certain four locomotive engines, agreeing to pay a yearly rental therefor of $2,800 each, a sum which is exorbitant and equal to twenty-five per cent. of the value of said engines, agreeing also in the lease to keep them at all times in perfect repair.

43. Your orators further aver that there is shown a general lack of experience, good judgment, and economy in the management and operating of the said Central Railroad of Iowa, the said managers entertaining extravagant and visionary views, not only as to the number of employees and the amount of rolling-stock required, but in running unnecessarily expensive passenger-trains as well, which trains do not clear the expenses of running the same.

44. That the said company, by its officers and employees, have been in the habit, directly or indirectly, of speculating in the earnings of their operatives, by discounting the acceptances issued so as aforesaid to them for their labor in and about the running and operating of the said company's line of railroad.

45. Your orators further show that the said Central Railroad Company of Iowa have made no net earnings for a long time past, and in consequence thereof the bondholders, whose money was used

in the construction of the said railroad, are without income or benefit from their investments; that so long as the said railroad is controlled and operated by the said present reckless and extravagant managers, the said bondholders cannot reasonably expect any returns from their said investment.

But your orators state further that two or more powerful railroad corporations stand ready to lease the said line of railway for a term of years, guaranteeing a rental of from 20 to 30 per cent. of the gross earnings thereof, provided the said present management can be got rid of, and they be free to control and manage the same themselves, without interference; and your orators say that such an arrangement would be beneficial to all the bondholders of said Central Railroad Company of Iowa, and to your said orators, and those whom they represent, would be satisfactory.

46. Your orators further show that the floating debt of the said railroad company is at least the sum of $500,000.00, besides matured interest on bonds, and the same is rapidly increasing.

The holders and owners of the said first mortgage bonds are very numerous, and cannot without manifest inconvenience and oppressive delay be all brought before the court. Your orators therefore pray that each of the said defendants answer the premises; that an account be taken, by or under the direction of the court, of what is due and owing upon the said first-mortgage bonds, for principal and interest upon the same, that the said defendant, The Central Railroad Company of Iowa, may be decreed to pay your orators, and those whom they represent, what may be found due them upon taking said account as aforesaid, together with the costs of this suit, by a day to be appointed by this honorable court for that purpose, or in default thereof, that the said Central Railroad Company of Iowa, and all persons claiming under them, may be absolutely debarred and foreclosed of and from all rights and equity of redemption, in or to the said mortgaged premises and property, and every part thereof, and may deliver up to your orators the said property, together with all books, records, papers, writings, and accounts relating thereto, or to any part thereof; that in the meantime a proper person be appointed as the receiver of the said Central Railroad of Iowa and property, to take charge of, manage, and operate the same.

And your orators pray for such other and further relief in the premises as the nature of the case shall require, and to your honors may seem meet. May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the Central Railroad Company of Iowa and the Farmers' Loan and Trust Company of New York, trustees of the bondholders of the Central Railroad Company of Iowa, thereby commanding them, and every of them, at a certain day, and under a certain pain to be therein specified, personally to be and appear before your honors, in the honorable court and then

and there to answer all and singular the premises, and to stand to perform and abide by such order and decree therein as to your honors shall seem meet. And your orators shall ever pray.

(Sgd) PLATT SMITH,
Att'ys for Compl'ts.

I, C. Alexander, being duly sworn, depose and say, that I am one of the complainants in the above-entitled cause; that I have read the foregoing bill of complaint and understand the contents thereof, and that each and every of the allegations of said bill are true, as I verily believe.

(Sgd.) C. ALEXANDER.

Sworn to and subscribed before me and in my presence, on this August 25th, 1874, by the said C. Alexander.

Witness my hand and notarial seal.

[SEAL.] E. W. EASTMAN,
Notary Public of Hardin County, Iowa.

"*A.*"

$1,000. $1,000.

First-mortgage bond.
State of Iowa.

Number 3,000. (Picture of locomotive and depot grounds.) Number 3,000

The Central Railroad of Iowa.

For value received, the Central Railroad Company of Iowa promises to pay to the Farmers' Loan and Trust Company of New York, or bearer, one thousand dollars in United States gold coin at par, on the 15th day of July, in the year eighteen hundred and ninety-nine, with interest in gold coin as aforesaid, at the (M.) rate of seven per cent. per annum, payable semi-annually, free from U. S. government tax, on the fifteenth (M.) days of January and July in each year, on presentation of the respective coupons hereto attached. Both principal and interest being payable at the office or agency of said railroad in the city of New York. This bond is one of a series of first-mortgage bonds of five hundred dollars and of one thousand dollars each, to be issued at the rate of only sixteen thousand dollars per mile of single railroad track, ironed and equipped for business by said railroad company. The payment of principal and interest of said bonds is secured by a deed of trust to the Farmers' Loan and Trust Company, bearing even date herewith, conveying to the said trustee all the railroad of this company located in the State of Iowa, including the road-bed, depot-grounds, buildings, right-of-way, rolling-stock, machinery, franchises, and net income acquired and to be acquired by said railroad company and duly recorded in the several counties in the State of Iowa through which the line of said railroad extends.

Picture mowing machine.

Picture two men in canoe on river.

Any holder of this bond may, after five years, have the same converted into the capital stock of the said railroad company, and be entitled to receive therefor ten shares of said capital stock on the surrender of this bond, with all the unpaid coupons thereto annexed. This bond shall not become obligatory until the certificate endorsed hereon is signed by the authorized officers of said Farmers' Loan and Trust Company.

In witness whereof the said railroad company has caused its corporate seal to be hereto affixed and these presents to be signed by its president and secretary and countersigned by its treasurer, on this 15th day of July, A. D. 1869.

[SEAL.] { Picture } { Eagle. } (Sgd.) C. C. GILMAN, *President.*

CHARLES COLLINS, *Secretary.*

Countersigned—

W. B. SHATTUCK, *Treasurer.*

(On face:) 1000.

(On margin:) The Central Railroad Co. of Iowa will pay thirty-35 five dollars to bearer, in United States gold coin, at their office or agency in the city of New York, on the 15th day of July, 1899, being semi-annual interest on bond No. 3000.

W. B. SHATTUCK, *Treas.*

Back of Bond.

No. 3,000. United States of America, State of Iowa. The Central Railroad Company of Iowa. First-mortgage bond, $1,000, convertible after five years. Authorized issue $16,000 per mile of finished road. Principal and interest payable in gold coin in the city of New York. Coupons due 15th of January and July in each year.

The Farmers' Loan and Trust Company of the city of New York hereby certify that the within bond is secured by a mortgage dated the 15th day of July, one thousand eight hundred and sixty-nine, on the road, property, and franchises of the Central Railroad Co. of Iowa, executed by said company to the Farmers' Loan and Trust Company as trustee, which mortgage has been duly recorded in the proper counties.

(Signed) R. F. RALLSTON,
President of the Farmers' Loan and Trust Co.

Notice.

Pursuant to a previous call a public meeting was held at Marshalltown, Iowa, at which, in conformity with the general incorporation laws of the State of Iowa, The Central Railroad Co. of Iowa was formed.

The principal place of business of said company is at Marshalltown.

The nature of the business of said company is the construction, equipment, and maintenance of a railroad from the south to the north line of the State of Iowa, on the 16th meridian of longitude, or as near as practicable thereto.

The amount of stock authorized is limited to twelve million dollars, to be paid in from time to time as ordered by the directors of the company.

The existence of this company begins on the twenty-third day of June, A. D. 1869, and ends by limitation in fifty years. The business of the company will be managed by eleven directors, president, vice-president, treasurer, and secretary. The highest amount of indebtedness or liability to which this company can subject itself is twenty thousand dollars to the mile. The private property of the stockholders is exempt from corporation debts.

(Sgd.) CHAS. ALDRICH, *Secretary.*

Marshalltown, Iowa, June 23, 1869.

Preamble.

Whereas it is proposed to effect a loan of four million dollars to provide the means to complete the line of the Central Railroad of Iowa from Marshalltown to the south line of the State of Iowa, and from Ackley to the north line of said state, and also provide the amount of $720,000 of bonds to be given in exchange for an equal amount of bonds now outstanding issued by the Iowa River Railway Company upon that portion of the line between Marshalltown and Ackley, forty-five miles in length; and whereas for that purpose it is now proposed to execute a mortgage or deed of trust upon the entire property of the company and net income, now owned or hereafter to be acquired, to the Farmers' Loan and Trust Company of New York as trustee, for the sum of four million dollars, to bear date on the 15th day of July, A. D. 1869, for the term of thirty years, and issue, predicated thereon, coupon bonds to the aggregate sum of four million dollars, in two series, one of which series shall be numbered from one to three thousand inclusively, for the sum of one thousand dollars each, and the other series to be numbered from one to two thousand inclusively, for the sum of five hundred dollars each; said bonds to draw interest at the rate of seven per cent. per annum, payable semi-annually on the 15th day of January and July in each year, both interest and principal to be payable in New York city, in United States gold coin, free from the United States income tax of five per cent., and said interest to be represented upon said bonds by a coupon for each installment:

Be it therefore resolved, That the president and secretary of this company are hereby fully authorized and empowered to execute in its behalf said mortgage and bonds, with the coupons attached, in

such form as shall be agreed upon by them and said trustee, and attach the seal of the company thereto.

MARSHALLTOWN, IOWA, *July* 10, 1869.

This is to certify that the foregoing is an accurate copy of preamble and resolution passed by the board of directors of the Central Railroad Company of Iowa on the day mentioned.

As witness my hand and the official seal of the company, this tenth day of July, 1869.

[SEAL.] (Sgd.) CHAS. COLLINS,
Secretary of C. R. R. of Iowa.

MARSHALLTOWN, *July* 10, 1869.

STATE OF IOWA, HARDIN CO.

On this 4th day of September, A. D. 1869, before me, Samuel A. Reed, clerk of the district court of Hardin county, Iowa, personally came Charles Collins, secretary of the Central Railroad of Iowa, to me personally known to be the identical person whose name is affixed to the foregoing instrument as secretary of said Central Railroad of Iowa, and acknowledged the execution of the same to be his voluntary act and deed as said secretary, for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed the seal of the district court of Hardin county, Iowa, at Eldora, Iowa, this 4th day of September, A. D. 1869.

[SEAL.] (Sgd.) SAMUEL A. REED,
Clerk of the District Court of Hardin County, Iowa.

"*B.*"

This indenture, made this 15th day of July, A. D. 1869, at Marshalltown, in the State of Iowa, between the Central Railroad Company of Iowa, a corporation duly and legally incorporated and existing by and under the laws of the State of Iowa, party of the first part, and the Farmers' Loan and Trust Company of New York, a corporation duly and legally organized and existing by and under the laws of the State of New York, party of the second part, witnesseth: That whereas the said party of the first part is the owner in fee of the railroad extending from Marshalltown, in the State of Iowa, to the village of Ackley, in said State of Iowa, a distance of about forty-five miles, which line of railroad is now subject to a mortgage or deed of trust, made by the Iowa River Railway Company, on the 21st day of September, A. D. 1868, to Henry L. Stout and L. D. Randall, of Dubuque, Iowa, trustees, in trust to secure the payment of seven hundred and twenty thousand dollars of bonds, all of which bonds are now outstanding, and a valid claim against the party of the first part, the said railroad having been purchased by the said party of the first part from said Iowa River Railway Company, agreeing in consideration thereof to exchange for said bonds an equal amount of

bonds to be issued in pursuance of this mortgage, as will hereafter more fully appear. And whereas said party of the first part is the owner in fee of the right-of-way, depot-grounds, and property heretofore owned by the Iowa Central Railroad Company from the point of junction with the south line of said State of Iowa, in Davis county, to the city of Oskaloosa, in Mahaska county, in said State of Iowa, by purchase and legal conveyance of said property to said party of the first part.

Aud whereas said party of the first part is desirous of continuing and extending said railroad from Marshalltown to the south line of the said State of Iowa, through the city of Oskaloosa, and from Ackley, in Hardin county, to the north line of said State of Iowa, as near as practicable to the sixteenth meridian of longitude west from Washington, entirely across the said State of Iowa, and equipping the said railroad.

And whereas said party of the first part has entered into a contract with the Iowa Valley Construction Company, a corporation duly organized and existing under the laws of Iowa, by which said last-named company agree to construct said railroad.

And whereas said party of the first part, for the purpose of paying said indebtedness, and providing means to pay for constructing the remainder of said railroad as aforesaid, have resolved to issue and deliver bonds to the number of three thousand, of the sum of one thousand dollars each, consecutively numbered from one to three thousand inclusive, and to the number of two thousand of the sum of five hundred each, numbered in like manner from one to two thousand inclusive, amounting to sixteen thousaud dollars per mile of railroad now built, or hereafter to be built, and not exceeding the aggregate sum of four millions of dollars, on the line above named. All of which bonds are duly and legally made and delivered by said railroad company, party of the first party, and in the form following:

First Mortgage Bond.

$1,000.	State of Iowa,	$1,000.
No.	United States of America.	No.
	Central Railroad of Iowa.	

For value received, the Central Railroad Company of Iowa promises to pay to the Farmers' Loan and Trust Company of New York, or bearer, one thousand dollars, in United States gold coin, at par, on the fifteenth day of July, in the year eighteen hundred and ninety-nine, with interest in gold coin, as aforesaid, at the rate of seven per cent. per annum, payable semi-annually, free from U. S. government tax, on the fifteenth days of January and July in each year, on presentation of the respective coupons hereto attached. Both principal and interest being payable at the office or agency of said railroad in the city of New York.

This bond is one of a series of first-mortgage bonds of five hundred dollars and of one thousand dollars each, to be issued at the

rate of only sixteen thousand dollars per mile of single railroad track, ironed and equipped for business by said railroad company.

The payment of the principal and interest of said bonds is secured by a deed of trust to the Farmers' Loan and Trust Company, bearing even date herewith, conveying to the said trustee all the railroad of this company located in the State of Iowa, including the road-bed, depot-grounds, buildings, right-of-way, rolling-stock, machinery, franchises, and net income acquired and to be acquired by said railroad company, and duly recorded in the several counties in the State of Iowa through which the line of said railroad extends.

Any holder of this bond may, after five years, have the same converted into the capital stock of the said railroad company, and be entitled to receive therefor ten shares of said capital stock on the surrender of this bond with all the unpaid coupons thereto annexed.

This bond shall not become obligatory until the certificate endorsed hereon is signed by the authorized officer of said Farmers' Loan and Trust Company.

In witness whereof the said railroad company has caused its corporate seal to be hereto affixed and these presents to be signed by its president and secretary and countersigned by its treasurer, on this fifteenth day of July, A. D. 1869.

President.
Secretary.

Countersigned—
Treasurer.

Now, therefore, the said Central Railroad Company of Iowa, party of the first part, for and in consideration of the premises and the sum of four millions of dollars received to their full satisfaction of said trustee, party of the second part, and for the purpose and with the intent of securing the payment of all of said bonds, with the interest due and to grow due thereon, hath granted, bargained, sold, conveyed, assigned, transferred, and confirmed, and by these presents doth grant, bargain, sell, convey, assign, transfer, and confirm to said Farmers' Loan and Trust Company of New York as trustee and in trust, to their successor or successors, the entire corporate property of the said Central Railroad Company of Iowa, and all its franchises and privileges, constructed or to be hereafter constructed, now held and acquired or to be hereafter constructed and acquired, extending from a point in Davis county, on the south line of the State of Iowa, at the intersection of said line by the North Missouri railroad, to Oskaloosa, in Mahaska county, a distance of about sixty miles along the line formerly owned by said Iowa Central Railroad Company, and thence northerly to Marshalltown, and thence along and including railroad built by the said Iowa River Railway Company, to Ackley, in Hardin county, and thence northerly to the north line of said State of Iowa, at such point as shall be hereafter definitely determined, including all the

rights and franchises of the said Iowa Central Railroad Company and of the said Iowa River Railway Company, including also along the entire line all the right-of-way acquired by purchase or condemnation, road-bed finished and in process of construction, with all material collected for construction or operative purposes, depot-grounds, gravel-pits, quarries, and real estate, station-houses, water-tanks, repair and machine shops, turn-tables, coal-houses and sheds, and all things of every name and nature, belonging to said party of the first part, and pertaining to said railroad; also all machinery, locomotives, and rolling stock, and all tools and supplies heretofore acquired or which may hereafter be acquired by said Central Railroad Company of Iowa; also the net income of the said party of the first part during the continuance of this trust.

The whole of said property being free and clear from all incumbrances except the issue of seven hundred and twenty thousand dollars of bonds under the said mortgage to Stout and Randall, trustees, on the railroad from Marshalltown to Ackley, but which bonds are to be exchanged for an equal amount of bonds issued in pursuance of this mortgage; and when that exchange shall be effected in full, then the entire property above described will be free and clear from all incumbrances except that created by this instrument: to have and to hold the above granted and bargained premises, with the appurtenances thereof, unto the said trustees and to their successor or successors and assigns in trust, and upon the trust, uses, and purposes hereinafter expressed of and concerning the same, for the use and benefit of the person or persons, firm or firms, bodies politic or corporate, who shall hereafter at any time become the purchasers or holders, owners or bearers, of any or either of said bonds subject to the terms, provisions, and stipulations in said bonds contained, and also subject to the possession and management of said railroad and property by said party of the first part and its successors and assigns, so long as no default shall be made in the payment of either interest or principal of said bonds or in any or either of them, and so long as the said company shall well and truly observe, keep, and perform all and singular the covenants, agreements, conditions and stipulations in said bonds and in this indenture contained and set forth and which are to be observed, kept, and performed by and on the part of said company, party of the first part.

It is further agreed by and between the parties hereto that the said party of the first part shall take up and exchange seven hundred and twenty thousand dollars of the bonds of said Iowa River Railway Company, in pursuance to the terms of the contract with said party of the first part and said Iowa River Railway Company for the purchase of their railway, dated July 22, 1869, to which reference is made, by giving the holders thereof the bonds secured by this mortgage in equal amounts, dollar for dollar. And that for the purpose of said exchange it is agreed that the said trustee,

party of the second part, may retain seven hundred and twenty thousand dollars of the bonds issued in pursuance of this mortgage for delivery to the holders of said Iowa River Railway Company bonds in manner to be hereafter agreed upon between said railroad companies. That the said trustee, party of the second part, shall cancel and discharge each and all of said Iowa river railway bonds as received in exchange as aforesaid, and make or cause to be made upon each bond a brief note or memorandum stating when exchanged, in such manner and form as will enable the party of the first part to trace the transaction, and when all of said Iowa river railway bonds shall have been exchanged and cancelled, the mortgage or trust deed upon which they are predicated shall be cancelled of record.

And the said party of the first part doth hereby covenant, promise, and agree for itself, its successors, or assigns, to and with the said trustee, their successor or successors, that the said company will well and truly pay each and every of said bonds issued by them and secured by this mortgage, together with the semi-annual interest to become due thereon, at the rate of seven per cent per annum, at the times, in the manner, and at the places specified therein, in United States gold coin.

And that in case said company shall, for the space of six months, make default in the payment of the said semi-annual interest to become due upon any, either, or the whole of said mortgage bonds, then, after the expiration of twelve months from the time it became due, and without demand or notice, at the election or option of a majority of the holders of said bonds, the whole principal sum mentioned in each and all of said mortgage bonds then outstanding shall forthwith become due and payable and the lien or incumbrance hereby created for the security and payment thereof, may at once be enforced. And it is agreed in case of the default of the payment of the semi-annual interest, as above provided, that said trustee, or its successor, is hereby expressly authorized and empowered, upon the request in writing of a majority of the owners or holders of said bonds, to enter into and upon, and to take actual possession of all the property, real and personal, and rights, franchises, and privileges of the premises hereby conveyed, and each and every part thereof, and by their agents or attorneys, have, hold, use, and enjoy the same, and from time to time make all repairs and replacements, and all useful alterations, additions, and improvements thereto as fully as the parties of the first part might have done before such entry; and to collect and receive all tolls, freight, incomes, rents, issues, and profits of the same and of every part thereof.

And the said trustees and their successor shall and may, and hereby is expressly authorized and empowered, to sell at public auction, to the highest bidder, the entire property, real and personal, rights, franchises, and privileges herein conveyed; said sale shall be either in the city of Marshalltown, Iowa, or in the city of New

York. At least three months' notice shall be given of the time and place and terms of said sale, by advertising the same in one or more newspapers of large circulation in each of the cities of Marshalltown and New York, and wherever else required by law, and containing said advertisement at least once a week until the time of sale. And the said trustee may, from time to time, adjourn said sale at discretion, giving reasonable notice of the time and place where it will take place.

And as the attorney in fact of the said party of the first part or their successors shall have full power and authority to make, execute, and deliver to the purchaser or purchasers thereof good, valid, and sufficient deed or deeds, conveyance or conveyances, assignments or transfers, in fee simple or otherwise, of the entire property herein conveyed, and all the rights, franchises, and privileges of the party of the first part or its successors, which conveyance or conveyances, transfer, or deeds shall vest in the purchaser or purchasers all the right, title, interest, and estate whatsoever, reversionary or in possession, or which they may be entitled to receive, have, or hold, of the said company, and said sale shall be a complete and perpetual bar or estoppel, both in law and equity, against said party of the first part, its successors or assigns, and all persons or parties claiming by, from, or under it or them in anywise or manner whatsoever.

The amount of the purchase-money on said sale may be paid and satisfied in whole or in part by the outstanding mortgage bonds, or any of them secured hereby, and said bonds shall be received in whole or in part payment and satisfaction by said trustee or its successor, according to their value, to be ascertained and determined by the net amount arising from said sale.

And out of the moneys received from said tolls, freights, incomes, rents, profits, and earnings of said railroad and premises, or out of or from the proceeds of said sale, so to be made as aforesaid, after first deducting the expenses, disbursements, cost, charges, and counsel fees incurred in about the conducting of said sale, or the working or operating said railroad, including the compensation and commission of said trustee in and about the execution of this trust, and all expenses of repairs, replacements, alterations, additions, and improvements, and all payments for taxes, assessments, charges, or liens on said premises or any part thereof.

The said trustee shall, if the amount secured shall be sufficient for that purpose, pay said mortgage bonds, or so many of them as shall then be outstanding and unpaid, together with all interest then due upon the same, and if the amount be insufficient, then to divide the same *pro rata* among the outstanding bonds; and the surplus of all such moneys or proceeds of sale, if any there be, shall be paid to said party of the first part, or its assigns or successor.

And it is further covenanted and agreed by and between the parties hereto that in case of any judicial foreclosure sale or other sale of the premises embraced in this mortgage, under the decree

of any court having jurisdiction thereof, based upon the foreclosure of this mortgage, and the holders of a majority of the then-outstanding bonds secured by this mortgage shall, in writing, request the said trustee or their successor, they are authorized to purchase the premises embraced herein for the use and benefit of the holders of the then-outstanding bonds secured by this mortgage.

And having purchased said premises, the right and title thereto shall vest in said trustee, and no bondholder shall have any claim to the premises or to the proceeds thereof, except for his *pro rata* share of the proceeds of said purchased premises as represented in a new company or corporation to be formed for the use and benefit of the holders of the bonds secured hereby, and that said trustee may take such lawful measures as deemed for the interest of said bondholders to organize a new company or corporation for the benefit of the holders of the bonds secured by this mortgage; said new company or corporation shall be organized upon such terms, conditions, and limitations, and in such manner as the holders of a majority of said outstanding bonds secured by this mortgage shall, in writing, request or direct; and said trustee so purchasing shall thereupon reconvey the premises so purchased by them to said new company or corporation. And it is further agreed that the said trustee may appoint and employ, at the expense of the said trust estate, all such attorneys, counselors, clerks, bookkeepers, engineers, or other agents as may be reasonably necessary in the execution of any of the trusts herein or hereby declared, and shall not be answerable for the defaults or other misconduct or neglect of such employees, unless chargeable with culpable negligence in the selections. And further that said trustee shall not be answerable or responsible for anything short of gross negligence or willful defaults in the discharge of the duties of this trust.

And it is further mutually agreed by the parties hereto that said trustee shall receive from said company for services in the acceptance of this trust, and the signing and delivery of the bonds issued hereunder, the sum of one dollar for each sum of one thousand dollars of bonds thus signed and delivered. And it is further mutually agreed that said trustee may be removed from the office of trustee hereunder by the vote of a majority in interest of the holders of said bonds at any meeting called for that purpose.

And also that said trustee may resign this trust and be thereby discharged from future liabilities thereunder by a notice of three months, in writing, to said company or its successors.

And the said company, for themselves, their successors, and assigns, hereby covenant and agree, for the consideration aforesaid, to execute and deliver any further reasonable and necessary deed or deeds, conveyance or conveyances, to the said trustee of the property herein described, for the more fully securing the payment of said bonds, particularly for the conveyance of any right, interest, or property acquired by said party of the first part subsequent to the

date hereof. Provided always, and this grant and conveyance is upon the express condition that upon the payment in full of said bonds, and the interest due thereon, or on the conversion thereof into the stock, in manner named in said bonds, on exhibiting said bonds cancelled to said trustee, then the estate, title, and interest of the said trustee shall cease, determine, and become void.

And upon request of the said party of the first part, or their successor, the said trustee shall duly execute and deliver a proper release or satisfaction of this mortgage.

In witness whereof the Central Railroad Company of Iowa have caused this indenture to be subscribed in its corporate name by its president and secretary, and have caused its corporate seal to be hereto affixed.

{ 50-cents stamp on each bond for every $500. }

(Sgd.) C. C. GILMAN, *President.*
" CHAS. COLLINS, *Secretary.*

STATE OF IOWA, } ss.
HARDIN COUNTY. }

Be it remembered that on the 9th day of September, 1869, before me, a notary public in and for said state and county, personally appeared Charles C. Gilman and Charles Collins, who are personally known to me to be the identical persons whose names are affixed to the foregoing indenture as respectively president and secretary, and acknowledged the same to be the voluntary act and deed of said Central Railroad Company of Iowa, and they each being by me duly sworn, depose and say, each for himself, that he, Charles C. Gilman, is president, and that he, Charles Collins, is secretary, of said railroad company; that they signed the foregoing instrument as such president and secretary, and caused the corporate seal of said company to be affixed hereto, all as the act and deed of said company, by order and authority of said company, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official seal, the day and year above named.

[NOTARIAL SEAL.] (Sgd.) E. W. EASTMAN,
Notary Public.

(Endorsed:) A. V. Lynde and others vs. Cent. R. R. of Iowa and others. Amended and substituted bill. Filed August 27, 1874. Geo. B. Corkhill, clk. Platt Smith, for complts.

Afterwards, to wit, on the 5th day of September, A. D. 1875, said complainants by their said attorney filed in said clerk's office their amendment to the amended and substituted bill in said cause, which said amendment is in the words and figures following, to wit:

Amendment to Bill.

In the Circuit Court of the United States for the District of Iowa.
October term, 1874.

CHARLES ALEXANDER, A. V. LYNDE, AND OTHERS,
against
THE CENTRAL RAILROAD COMPANY OF IOWA AND THE Farmers' Loan and Trust Co. of New York, Trustees.

To the Judges of the Circuit Court of the United States for the District of Iowa:

And now comes the complainants and file herein their amendment of the amended and substituted bill, as follows: by adding to the conclusion of paragraph—

33. That the said defendant, the Central Railroad Company of Iowa, is wholly insolvent and irresponsible, and that the entire property of the said company is, as your orators believe and are informed, not worth the sum owing upon said first-mortgage bonds, the said property included in the said three several mortgages and all property of said company being worth only about the sum of $200,000.00.

(Sgd.) PLATT SMITH,
Compl'ts Attorney.

I, W. N. Davidson, depose and declare that I am acquainted with the property of the Central Railroad Company of Iowa, included in the three several deeds of trust thereof referred to in the amended and substituted bill in this cause, and with the general financial and property condition of the said company, and that the allegations of the foregoing amendment are true, as I verily believe.

(Sgd.) W. N. DAVIDSON.

Sworn to and subscribed before me, on this 4th September, 1874, by the said W. N. Davidson.

Witness my hand and official seal.

[SEAL.] GUS. T. PETERSON,
Notary Public Webster County, Iowa.

(Endorsed:) Alexander and others vs. Cent. R. R. and others. Amendment of substituted bill. Filed Sep. 5, 1874. Geo. B. Corkhill, clerk.

Afterwards, to wit, on the 14th day of October, the same being of the October term, 1874, of said court, there appears in the records and proceedings thereof in said cause the following entry, to wit:

United States Circuit Court District of Iowa, October Term, 1874.

WEDNESDAY, *October* 14, 1874.

CHARLES ALEXANDER ET AL.
vs.
THE CENTRAL R. R. CO. OF IOWA. } No. 501, Eq.

This cause came on to be heard on defendant's, the railroad co., demurrer to the complainants' bill of complaint herein, complain-

ants appearing by Platt Smith, esquire, and John F. Duncombe, and the defendant, the railroad company, by Boardman and Brown, and the loan and trust company by Grant and Smith, and the court, after argument of counsel thereon, being fully advised, orders that said demurrer be, and the same is hereby, overruled, and by consent the complainants dismiss their bill as to the loan and trust company, and said loan and trust company is given leave to file a bill and become complainant herein.

On the same day, to wit, Oct. 14, 1874, the Farmers' Loan and Trust Company, by its attorneys, Messrs. Grant & Smith, filed in said clerk's office in said cause its bill of complaint against the Central Railroad Company of Iowa, which said bill of complaint is in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Iowa.

THE FARMERS' LOAN AND TRUST COMPANY OF NEW YORK, Trustee,
vs.
THE CENTRAL RAILROAD COMPANY OF IOWA.

Bill of Complaint.

To the judges of the Circuit Court of the United States for the District of Iowa.

1. The Farmers' Loan and Trust Company of New York, a corporation duly and legally organized, existing, and doing business in the State of New York, under the laws thereof, trustee for the bondholders under the trust deed or mortgage hereto attached, marked exhibit "B," and made part hereof, and a resident and citizen of said State of New York, who sues in behalf of the bondholders secured by said mortgage or deed of trust. And on behalf of the bondholders secured by a second and third deed of trust, herein referred to and made part hereof, bring this their bill of complaint against the defendant, the Central Railroad Company of Iowa, a corporation duly organized, established, and existing under the laws of the State of Iowa, and a citizen of the State of Iowa, and thereupon your orators complain and say:

2. That heretofore, to wit, on the 15th day of July, 1869, the said Central Railroad Company of Iowa, defendants, desiring to obtain money with which to construct, build, and equip a certain railroad within the said State of Iowa, as hereinafter set forth, and being thereto lawfully authorized, duly made, executed, and delivered unto your orator certain first-mortgage bonds of said Central Railroad Company of Iowa, for the sum of $3,776,000.00, payable to the said Farmers' Loan and Trust Company of New York, or bearer, on the 15th day of July, 1899, in United States coin at par, with interest in gold coin as aforesaid at the rate of seven per cent.

per annum, payable semi-annually, free from United States government tax, on the 15th days of January and July in each and every year, on presentation of the respective coupons thereto attached, both principal and interest payable at the office or agency of said railroad company in the city of New York, said series of bonds being of the denomination of five hundred and one thousand dollars each. A copy of one of said bonds is hereto annexed, marked "A," and made part of this bill, the same being precisely like all the others of said bonds, save number and denomination, and having annexed thereto sixty several interest-coupons, to fall due at the dates aforesaid, calling for the sum of thirty-five dollars each, all of said coupons being precisely alike, save numbers, amounts, and time of maturity, one of the same, by copy, being a part of said exhibit "A," said bonds being duly signed by said railroad company, president and secretary, countersigned by its treasurer, and the certificate thereon printed signed by the authorized officers of your orator, and duly sealed with the seal of the company.

3. That on the 9th day of Sept., 1869, the said Central Raidroad Company of Iowa, being thereunto lawfully authorized, for the purpose of securing the payment of said bonds at the several dates when the principal and interest thereof should fall due to the holders and owners thereof, made, executed, and delivered unto your orator, trustee of the holders and owners of the said bonds, and to said trustee's successors, one certain mortgage deed of trust of the entire corporate property of the said Central Railroad Company of Iowa, and all its franchises and privileges then held and acquired, or to be thereafter constructed or acquired, extending from a point in Davis county on the south line of the State of Iowa, at the intersection of said line by the North Missouri railroad, thence to Oskaloosa, in Mahaska county, thence northerly to Marshalltown, thence to Ackley, in Hardin county, and thence northerly to the north line of the State of Iowa, at a point to be thereafter determined, including all the rights-of-way, road-bed finished and in process of construction, with all material for construction or operation purposes, depot-grounds, gravel-pits, quarries and real estate, station-houses, water-tanks, repair and machine shops, turn-tables, coal-houses and sheds, and all things of every name and nature belonging to said company; also all machinery, locomotives, and rolling-stock, all tools and supplies acquired or to be acquired, and the net income of said railroad company during the continuance of said trust, a copy of which mortgage is hereto annexed and referred to, as marked "B."

4. That afterwards the said deed of trust was filed for record in the offices of the recorders of the several counties through which the said line of railway extends, and the same was duly recorded in said several counties of Iowa, as shown by the following schedule:

In the county of Davis, Sept. 16, 1869.

In Appanoes county, Sept. 20, 1869.

" Mahaska county, Sept. 17, 1869.
" Monroe county, Sept. 17, 1869.
" Jasper county, April 3d, 1874.
" Wapello county, Sept. 18, 1869.
" Powsheik county, Sept. 17, 1869.
" Marshall county, Sept. 10, 1869.
" Hardin county, Sept. 10, 1869.
" Franklin county, Sept. 11, 1869.
" Cerro Gordo county, Sept. 13, 1869.
" Worth county, Sept. 16, 1869.

5. That afterwards the said Central Railroad Company of Iowa, through its agents, negotiated and delivered, for a valuable consideration, unto your orator, complainant, and to divers and sundry persons, who are exceedingly numerous, and many of whom are unknown to your orator, a large number of said first-mortgage bonds, to wit, amounting to the sum of $3,700,000.

6. That afterwards, on the 15th days of January and July, 1870, and in the years 1871 and 1872, when such installments of semi-annual interest, as evidenced by the coupons thereto annexed, fell due upon the said bonds, the said Central Railroad Company paid the same; but your orator further complains and avers—

7. That on the 15th days of July, 1873, and on the corresponding dates in July and the 15th day of Jan'y, in the year 1874, large sums of the semi-annual installments of interest on said bonds for the six months preceding each of the said dates fell due, and thereupon a large number of the several owners and holders of the coupons representing said interest presented the same at the office and agency of the said Central Railroad Company of Iowa in the city of New York, and demanded payment thereof, but the said railroad company thereupon neglected and refused to pay the same, and still does fail, neglect, and refuse to pay the same, and a large portion of the said interest due Jan'y, 15th, 1873, and substantially all of the said interest which fell due July 15th, 1873, and Jan'y 15th and July 15th, 1874, remains wholly due and unpaid.

9. Your orator, further complaining, shows that on the 15th day of April, 1871, the said Central Railroad Company of Iowa, deft's, made, executed, and delivered unto the said Farmers' Loan and Trust Company of New York, your orator, certain second-mortgage bonds for about the sum of $925,000, payable to the said Farmers' Loan and Trust Company of New York, or bearer, on the 15th day of April, 1901, with interest in United States gold coin, free from government tax, at seven per cent. per annum, payable semi-annually on the 15th days of April and October in each year, on presentation of the respective coupons attached, at the office or agency of the said railroad company in the city of New York, said bonds being of the denomination of one thousand dollars each.

10. That on said 15th day of April, 1871, the said Central Railroad Company of Iowa, for the purpose of securing the payment of

the said last-mentioned bonds at the dates when the principal and interest thereof fall due to the holders and owners thereof, executed and delivered unto the said Farmers' Loan and Trust Company of New York, as trustee of the said holders and owners, a certain 2nd mortgage or deed of trust of that date of all the property, franchises, and privileges acquired and to be acquired by the said Central Railroad Company of Iowa, together with all machinery and rolling-stock and earnings of the said railroad company, being in fact the same property heretofore included in the said first mortgage, the lien of said second mortgage being therein made specially junior and subject to the said first mortgage, which mortgage was also recorded in the several counties before named, but subsequent to the dates when the said first mortgage was recorded therein, and the said second mortgage is a second lien upon the said railroad and property.

11. That afterwards the said Central Railroad Company of Iowa negotiated and sold in the market a large number of the said second-mortgage bonds, amounting to about the sum of $925,000, and

12. That as your orators are informed and believe, nearly the whole amount of interest on said second-mortgage bonds which fell due April 15th and Oct. 15th, 1873, and April 15th, 1874, is still due and unpaid, said railroad company being insolvent and wholly without funds with which to pay the same or any part thereof.

13. Your orator further represents that on the 15th day of May, 1872, the said defendants, the said Central Railroad Co. of Iowa, made and executed unto the said Farmers' Loan and Trust Company of New York, payable to them or bearer, certain third-mortgage bonds of the said Central Railroad Company of Iowa, for the sum of about of $1,400,000, to fall due on the 15th day of May, 1902, with interest in gold coin, free from government tax, at seven per cent per annum, payable semi-annually on the 15th days of May and November in each year, on presentation of the respective coupons thereto attached, at the office or agency of the said Railroad Company in the city of New York, said bonds being of the denomination of $1,000, and

14. That on said 15th day of May, 1872, said Central Railroad Company of Iowa, for the purpose of securing the payment of the said last-mentioned bonds, and the interest thereon, at the several dates when the same should fall due to the holders and owners thereof, executed and delivered unto the said Farmers' Loan and Trust Company of New York, as trustees of said holders and owners, a certain third mortgage on all that property included in the said 1st and 2nd mortgages, stipulating therein that the lien thereon was subject to the liens created by said 1st and 2nd mortgages, which said third mortgage was recorded in the several counties through which the said line of railway extends, but after the recording therein of the said 1st and 2nd mortgages.

15. That afterwards the said Central Railroad Company of Iowa negotiated loans of large sums of money, and contracted certain considerable indebtedness in the purchase of cars on credit, depositing large sums of said last-described bonds as security for the payment thereof, to wit, about $500,000 of said bonds, upon which no interest has been paid to this date, although such interest is due, and defendants have no funds to pay the same, but are wholly insolvent.

16. Your orator further shows that Isaac M. Cate, of Boston, Massachusetts, has, for about two years past, been one of the directors, and ever since April 15th, 1873, president of the said railroad company.

17. That John S. Gilman, Horace Abbott, and Thomas Kensett, of Baltimore, Maryland, have been directors of said railroad company ever since its organization. That A. L. Hatch, until a few days ago, treasurer, and G. E. Taintor and H. C. Fahnstock, all of the State of New York, have also been, and your orators believe still are, directors thereof.

18. That the said Cate, Gilman, Abbott, Kensett, Hatch, Fahnstock, and Taintor constitute a majority of the board of directors of said company.

19. That the said President Cate, and the said other parties directors, each hold large amounts of the floating indebtedness of the said railroad company, and (beside the bondholders) are the principal creditors thereof.

20. That D. N. Pickering is, and ever since the 15th day of April, 1873, has been, the general superintendent of said railroad company, and has almost the entire management of said company's affairs in Iowa; that although the by-laws of the said company require that the treasurer shall give bonds in such sum as the directors shall order, no order has been made by them in that respect at the date of the filing of the original bill herein, nor, as your orator believes and charges, has any such order yet been made, nor was any such bond ever given by the said A. L. Hatch, treasurer, nor, as your orator believes and charges, has any such bond been given by his successor in office.

21. That the said deft.'s railroad company's treasurer is continually absent in New York.

22. That the business properly pertaining to the treasurer's office within this state is wholly managed by the said D. N. Pickering and his clerks, who are in the habit of receiving and paying out money belonging to the said railroad company and making no report of such receipts and expenditures to the treasurer.

23. Your complainant orator further represents that the said Central Railroad Company of Iowa, acting by its directors aforesaid, on the 10th day of June, 1873, caused to be issued and sent to all the holders of its bonds a certain printed circular, which contained, among other things, the following statements:

24. The following is a comparative statement of the earnings and disbursements of 1872 and 1873, namely:

March, 1872,	earnings...		42,301
	expenses...	42,750	
April	earnings...		42,405
	expenses...	49,752	
May	earnings...		38,388
	expenses...	48,402	
		140,904	123,094
March, 1873,	earnings...		63,288
	expenses...	43,358	
April	earnings...		55,709
	expenses...	38,715	
May	earnings...		52,000
	expenses...	37,000	
		119,073	170,997

25. And the said circular also contained the following purposes and solicitations addressed to the bondholders of said Central Railroad of Iowa:

"In order to obtain means for equipping this road it is necessary to ask the bondholders to extend the interest coming due during two years, until January 1st, 1879, the coupons for the two years' interest to be placed with the Farmers' Loan and Trust Company, at New York city, in trust, that company being the trustee for the bondholders, and scrip for these amounts payable Jan'y 1st, 1879, with interest at 7 per cent. gold, payable semi-annually, to be given therefor, interest to be added to Jany. 1st, 1874, on coupons due April and October, 1873, and deducted from those coming due after that date, up to and inclusive of Jany. 15th, 1875."

26. Your orator further avers and shows, with reference to the said circular, that the same was in the aforementioned statement of comparative earnings and expenses of said railroad, intended to be used and was used by said railroad company for the purpose of inducing these complainants orators and the other of said bondholders to extend the payment of said interest coming due for two years, until January 1st, 1879; and your orator further avers and shows that the said table of earnings and expenses, together with other statements in said circular contained, were made the basis of an estimate, showing that the net earnings of the said railroad were largely increasing, which estimate was therein made to said bondholders for the purpose of inducing them to extend the payment of interest as aforesaid by a contract to that effect, and to tie themselves up so that the said mortgages could not be foreclosed, and these your orators further show and specifically charge that the said tables and other statements of said circular were false in fact.

That instead of there having been net earnings of the said railway in May, 1873, of $15,000, there had been a loss of $42.20.

That instead of net earnings of the said railroad during said period of 3 months of $51,928.00, the net earnings thereof were only about the sum of $27,499; that the said estimate of increase of net earnings, based upon said table and other estimates, were also false and made with intent to deceive and mislead your orators and the other of said bondholders, and to induce them to extend the payment of said interest as aforesaid. That the said railroad company, in so composing and circulating said circular among the holders of said bonds, conspired and confederated together to cheat, wrong, and defraud bondholders by inducing them to believe that the net earnings of the said railroad were much greater than they really were, and that such net earnings would increase in a much greater ratio than the facts known to said directors warranted them in so estimating and representing, and by inducing the bondholders to grant an extension as asked in the said circular, under the belief that by so doing the bondholders would realize their interest at an earlier day than they otherwise would.

27. And your orator further avers and shows that a large number of the holders and owners of said first-mortgage bonds, believing said statements in said circular contained to be true, and relying thereon, were thereby induced to surrender their coupons to the said Farmers' Loan and Trust Company of New York, trustees, and to extend the payment of interest due and to become due thereon, as asked by said railroad company in said circular, and to receive in lieu thereof a scrip interest-certificate purporting to entitle the holder thereof to the payment of semi-annual interest upon the sum of interest represented by said coupons, but that a large number of bondholders did not so surrender their said coupons, nor enter into the said contract of extension of the payment of interest.

28. Your orators further show that heretofore, to wit, on the 19th day of February, 1874, your said orators and numerous of the holders and owners of the first-mortgage bonds aforesaid, and numerous holders of said second-mortgage bonds, having discovered that the said circular of June 10th, 1873, was false and fraudulent as aforesaid, and being informed of misapplications on the part of said railroad company of the net earnings of their railway in the payment of floating indebtedness, and of the general mismanagement of said company's affairs, and being very apprehensive and solicitous with regard to their interests in said railroad and property, held a meeting of the bondholders of the said Central Railroad Company of Iowa, pursuant to public notice, at Mionian Hall, Boston, Mass., to take council in relation thereto, and to adopt measures for relief in the premises.

That the said bondholders' meeting was attended by a very large proportion of the first as well as of the second-mortgage bonds; that at said meeting great unanimity prevailed, and it was resolved

that all parties in interest amicably join in a petition to the courts for a decree of foreclosure, which shall give the first-mtg. bondholders the preference to which they are entitled, &c. The said meeting appointed Charles Alexander, A. V. Lynde, and H. J. Boardman, bondholders, a committee to carry out the recommendations made by said meeting; that the said meeting took such action with reference to said funding contract that the said bondholders disaffirmed and rescinded the same, since which time the holders of large sums of said second-mortgage bonds have sent to said committee their disaffirmance and rescission of the said contract of funding the said interest, and authorized said committee to take such action as they deemed best to effect a foreclosure of said first and second-mortgage bonds, and your orators believe and state that before a decree can be reached in this cause the holders of a majority in amount of the said bonds will have so disaffirmed the said funding contract and elected to request your orators to proceed and foreclose the mortgages and trust deeds in an action for foreclosure.

29. Your orators further show that the said bondholders' committee afterwards called upon your orators, although then unknown to your orators, and demanded that your orators, as trustees of the said 1st-mortgage bondholders, bring an action to foreclose the said 1st mortgage of the Central Railroad Company of Iowa, but on account of the funding of the coupons as aforesaid, as your orator then understood the matter, your orator refused to comply and appeared in the cause commenced by certain bondholders as def'ts, but believing it necessary, after further information, for the securing of the property and the rights of the bondholders that a foreclosure should take place and that a receiver should be appointed to take charge of the property of the defendants and the rents and profits thereof, now appear, the said suit having been dismissed as to your orator, and file this bill of complaint on behalf of the bondholders.

30. Your orators further show that one of the provisions of the scrip interest-coupons aforesaid was that if default should be made at any time in the payment of the principal sum thereof or the semi-annual interest thereon, the bearer thereof should be entitled to receive from your orators the original coupons and pursue his remedy upon said original coupons.

31. That on the 1st day of July, 1874, divers of the holders and owners of the said scrip coupons, and divers holders and owners of said original coupons of interest due on that day upon the said 1st-mortgage bonds, presented the same at the office and agency of the said Central Railroad Company of Iowa, in the city of New York, and then and there demanded payment thereof, but the said Central Railroad Company of Iowa then and there neglected, failed, and refused to pay the same or any portion thereof, and still does so neglect, fail, and refuse to pay the same, and the said railroad company is wholly without funds with which to pay the interest due upon the said first-mortgage bonds, and is wholly insolvent.

32. Your orators further show that the net earnings of the said Central Railroad Company of Iowa, as shown by the reports of its officers, were, for the year 1872, the sum of $140,000, and for the year 1873, the sum of $126,000.

33. That the said company's bonded indebtedness, inclusive of interest, is the full sum of $5,500,000 in gold, part thereof owing upon said first-mortgage bonds, including interest, being the sum of at least $4,000,000 in gold. That the interest upon all of the bonds of said company is rapidly increasing; that the affairs of said company are hopelessly involved, and that there is no reason for believing that the affairs of said railroad company will or can be improved under the present management thereof.

34. Your orator further avers that the affairs of said Central Railroad Company are managed in a very expensive and extravagent manner, in that the said company kept and now keeps in its employ a large number of unnecessary and useless officers and employees, paying exorbitant salaries and compensation for their service, and that the said company have hitherto made and are still making large and unnecessary disbursements of its gross earnings in the purchase and lease of locomotive engines and cars, which are not needed for the successful operation of said railway, owing to which needless expenditures and other mismanagements of said company their disbursements for the six months immediately preceding the 1st day of July, 1874, exceeded the earnings by more than $2,000.

35. Your orators further show that a large proportion of the said Central railroad has been built only about 3 years, and the smaller and older portion only about 5 years, and that in consequence thereof no additions of new iron has been required and none in fact made.

36. That the wooden structures, ties, &c., being comparatively new, have required only light repairs, and even these have been inadequately made.

37. Your orators further complain and represent that the said Isaac M. Cate, president, and John S. Gilman and Horace Abbott are nearly related to each other by marriage, that is to say, the said Cate and Gilman are sons-in-law of said Abbott; that, as your orator is informed and believes, the said Cate, Gilman, and Abbott, believing that as an extension of the payment of interest had been secured as aforesaid, and the hands of the bondholders so tied up that a foreclosure could not be had, they could then secure judgments against the said railroad company for their respective portions of the said flonting debt, and so secure liens for the same upon the said company's road and property, which would have priority over the liens of the bondholders, employed the firm of Seevers and Cutts, (said Seevers being then and now vice-president of said company,) who commenced three several suits against said railroad company in the Circuit Court of Powsheik County, Iowa, on the

part of said Gilman, Abbott, and Cate; that said attorneys requested the said D. N. Pickering, general superintendent of said company, to go from Marshalltown, the place where said railroad company's offices are kept, to said Powsheik county for the purpose of having the orignal notice of said suits served upon him; that the said Pickering went accordingly to the said county, and the original notices of said suits were served upon him by a person not an officer; that said suits were brought at a point remote from the line of said Central railroad, and were conducted with as much secrecy as possible, and such proceedings were had therein that a judgment was rendered against said railroad company, in favor of each of said parties by default, the same aggregating about $189,000, and the said parties thereupon caused transcripts of each of the said judgments to be filed in nearly all the counties through which said line of railway extends, and in one or more of said counties, through some oversight, the said third mortgage had not been recorded, and in many of such counties the recording and indexing of said 1st and 2nd mortgage had been so defectively performed that the said judgments are apparently a lien upon the said railroad and property superior to the liens of the said mortgages.

Your orators further show that said judgments were fraudulently obtained by the plaintiffs therein, with the knowledge and connivance of other members of said company's board of directors.

38. That in at least one case, to wit, in the case of Isaac M. Cate vs. The Central R. R. Co. of Iowa, in which action the sum $10,000 and interest was claimed upon an order of the said company drawn upon the said Isaac M. Cate, which sum and order had long theretofore been paid to said Cate, notwithstanding which payment in full the said sum so paid entered into and now forms a part of said judgment.

39. And your orator believes and avers that the said Cate, Gilman, and Abbott intend to proceed to collect the said judgment by distress and sale of some of the said railroad company's property included in the said mortgage.

40. Your orator further avers and specially charges, that the said railroad company have made repeated fraudulent preferences in the payment of their indebtedness, and have frequently misapplied their gross earnings to the payment of their floating debt, paying off and discharging coupons of the said second-mortgage bonds, while at the same time failing and refusing to pay off and discharge coupons of the first-mortgage bonds, and by applying said gross earnings in payment of many other debts having no priority nor lien whatever, but to which the claims of the first-mortgage bondholders are and were senior and superior.

41. Your orator further shows that, while the said company have so as aforesaid been misapplying their earnings to the payment of floating indebtedness, they have fallen largely in arrears in the payment of workmen and operatives engaged in and about the operating

of the said railway, so that at this date their indebtedness upon said account is at least $100,000, a part of which sum has been due ever since August, 1873, and said railroad company has been in the habit of issuing acceptances to said laborers and employees for their services, and giving as reason of non-payment that there are no funds in hand.

42. Your orator further avers that the said railroad company has leased of the said Cate, president, and Gilman, Abbot, and Kensett, directors of said company, certain four locomotive engines, agreeing to pay an annual rental therefor of $2,800 each, a sum which is exhorbitant and equal to twenty-five per cent. of the value of said engines, agreeing also in the lease to keep them at all times in perfect repair.

43. Your orator further avers that there is shown a general lack of experience, good judgment, and economy in the management and operating of the said Central Railroad of Iowa, the said managers entertaining extravagant and visionary views, not only as to the number of employees and amount of rolling-stock required, but in running unnecessarily expensive passenger-trains as well, which trains do not pay the running expenses of the same.

44. That the said company, by its officers and employees, have been in the habit, directly or indirectly, of speculating in the earnings of their employees by discounting the acceptances issued so as aforesaid to them for their labor in and about the running and operating of the said company's line of railroad.

45. Your orator further shows that the said Central Railroad Company of Iowa have made no net earnings for a long time past, and in consequence thereof the bondholders whose money was used in the construction of the said railroad are without revenue or benefit from their investment; that so long as the said railroad is controlled and operated by the said present managers the said bondholders cannot reasonably expect any return from their said investment. But your orator states further that two or more powerful railroad corporations stand ready to lease the said line of railway for a term of years, guaranteeing a rental of from 20 to 30 per cent. of the gross earnings thereof, provided the said present management can be got rid of and they be free to manage and control the same themselves without interference. And your orators say that such an arrangement would be beneficial to all the bondholders of said Central Railroad Company of Iowa, and to those whom your said orator represents, and would be satisfactory to them.

46. Your orator further shows that the floating debt of the said railroad company is at least the sum of $500,000, besides matured interest on bonds, and the same is rapidly increasing. The holders and owners of the said first-mortgage bonds are very numerous and cannot, without manifest inconvenience and oppressive delay, be all brought before the court. Your orators therefore pray that said defendants answer the premises; that an account be taken by or

We also represent that in purchasing said engines we were actuated by a sincere desire to benefit the deft., and furnish it facilities for improving its condition, at rates less than we were advised were usual in such cases; that we are now and always have been ready and solicitous to give the road the fullest benefit of our purchase, consistent with equity.

To remove any doubt that may exist, and to enable deft. to avail itself of the purchase, we desire such additional or other terms may be made by this court as may result in the ultimate ownership of the locomotives by deft.

To that end we move an order be made that the balance rent due us, as above stated, be ordered paid us by the receiver from the earnings of the road; that when the whole sum be reimbursed that we originally paid, with 7 per cent. interest per annum, (including the said $3,500 paid on each engine as part,) that then the said locomotives be and become the absolute property of deft., and that such sum be ordered paid within twenty-four months.

We also move for such other and further relief as may be consonant with justice.

(S'g'd) H. E. J. BOARDMAN,
Atty. for Mess. Abbott, Kensett, Cate, and Gilman.

Dated Ap. 8, '75.

Original.

To Mess. GRANT & SMITH, *Attys. for Pltff.*

Take notice, on the 3rd day of May, A. D. 1875, at 11 o'cl'k a. m., before Hon. Jno. F. Dillon, (judge,) in the cause of the Farmers' Loan and Trust Co., (pltff.,) v. Central Railroad Co. of Iowa et al., defts., Mess. Horace Abbott, Thos. Kensett, John S. Gilman, and Isaac M. Cate will present to said judge a motion for an order concerning certain four locomotives.

A copy of said motion is herewith submitted and you can resist the same if you desire so to do.

(Signed) H. E. J. BOARDMAN,
Atty. for Abbott et al.

Ap. 8, 1875.

We acknowledge due and legal service hereof, this 30th day of April, 1875.

(Signed) GRANT & SMITH,
Attys. for Pltff.

I, Aretas Blood, of Manchester, New Hampshire, on oath say, that I am the manager of the Manchester Locomotive Works; that in the early part of 1873 I built for Mr. Isaac M. Cate, of Boston, two 32-ton locomotives, Advance and Volunteer, for the sum of $13,750, with the addition of $125 on each for injectors; that I make no rebate of commission to Mr. Cate or any other person on this price for those engines; that the price was as low as I would

have built such engines for any other person at that time; that there had been a large and increasing demand for locomotives during that year and for several years previous, which, since the financial panic in the fall of 1873, has largely fallen off, and that the delivery of the same weight and description of locomotive can now be readily contracted for at $9,000 apiece.

(Sgd.) ARETAS BLOOD.

THE STATE OF NEW HAMPSHIRE, } ss.
HILLSBOROUGH. }

SEPTEMBER 10, 1874.

Then personally appearing Aretas Blood, made solemn oath that the foregoing affidavit by him subscribed is, in his belief, true.

Before me—
[SEAL.] L. B. CLOUGH, *Notary Public.*

STATE OF NEW HAMPSHIRE, } ss.
HILLSBOROUGH. }

I, Roland C. Rowell, clerk of the police court for the city of Manchester, do hereby certify that Lucien B. Clough, esq., before whom the foregoing affidavits *were* made, and who has hereunto set his name, was at the time of so doing a notary public in and for the county of Hillsborough, and said state, duly commissioned and sworn; that all his official acts as such are entitled to full faith and credit, and that his signature thereto is genuine.

In testimony whereof I have hereunto signed my name and affixed my official seal, this 10th day of September, 1874.

[SEAL.] (Sgd.) ROLAND C. ROWELL, *Clerk.*

I hereby acknowledge receipt of a copy of the within affidavit, at Dubuque, Iowa, this 14th day of September, 1874.

(Sgd.) PLATT SMITH, *Atty for Pltffs.*

A poor tissue copy.

(Endorsed:) Chas. Alexander et al. vs. Central R. R. of Iowa et al. In Cir. Ct. U. S. Aff. of Aretas Blood.

I, William Mason, of Taunton, Massachusetts, on oath say, that I —— sixty-five (65) years old, and am president of the Mason's Machine Works, and that I am a builder of locomotive engines, and have been such for last 22 years; that I built for Isaac M. Cate, of Boston, in the year 1873, two ten-wheel locomotives, weighing about, and not exceeding, 35 tons each, for sum of $15,000 each nett cash delivered on track at my works, without the allowance of rebate or any commission whatever from that price to any one; that it was the same price I received from the Lehigh Valley R. R. for 6 locomotives of same weight and description, which I was at the time building for that road; that they were like unto locomotives built both before and since for said Lehigh Valley

R. R.; that owing to the addition of an extra pair of drivers and the increased size of cylinder and the even distribution of their weight over ten, instead of eight wheels, gives them more tractive power, makes them steadier on the tracks, and increases their ability to draw full 50 per cent. over the ordinary 32-ton, 16 x 24-inch cylinder, 8-wheel engine; that such engines, and similar ones built by others and myself, are largely in use on the Union and Central Pacific roads, and on coal roads generally, where great and steady power is needed in transporting heavy coal or freight trains; that locomotives were in great demand in 1873, and very high at the time I made the contract with Mr. Cate; that the demand is now slack, and I am now building eight such locomotives for the Lehigh Valley R. R. for $11,350 each.

(Sgd.) WM. MASON.

I hereby acknowledge receipt of a copy of the within affidavit, at Dubuque, Iowa, this 14th day of September 1874. A poor tissue copy.

PLATT SMITH, *for pltff.*

STATE OF MASSACHUSETTS, } *ss.*
SUFFOLK. }

CITY OF BOSTON, *Sept.* 11, 1874.

Personally appeared before me the within-named Wm. Mason, and made oath to the truth of the foregoing statement by him subscribed.

In witness whereof I have hereunto set my hand and seal of office, the day and year above written.

[SEAL.] (Signed) HENRY D. CLARY,
Notary Public.

(Endorsed:) Charles Alexander et al. *vs.* C. R. R. of Iowa et al. Aff. of Wm. Mason.

MARSHALLTOWN, IOWA, *October* 15, 1873.

This certifies that the Central Railroad Company of Iowa have hired of Horace Abbott, John S. Gilman, Thomas Kensett, and Isaac M. Cate, four locomotive engines, whereof two 16 x 24-inch cylinders, named Volunteer and Advance, were delivered June 7th, 1873, one 17 x 24-inch cylinders, named Pickering, was delivered September 30th, 1873, and one 17 x 24-inch cylinders, named Russell, was delivered October 17th, 1873, and acknowledge the receipt of the same in good order and condition and complete in every respect.

The railroad company agree to pay Messrs. Abbott, Gilman Kensett, and Cate for the use of these engines monthly, from the above respective dates of their delivery, at the rate of twenty-eight hundred dollars per year for each engine so delivered, and to keep each of them in good order, repair, and condition. The said Abbott, Gilman, Kensett, and Cate may, whenever they please, terminate the

lease of these engines and take possession of them, and for this purpose may, by themselves or their agents, enter into and upon the premises of the said railroad company, and take and remove said locomotives, using all proper and convenient means therefor, including the use of the railroad itself.

Whenever the lease is terminated, the said Abbott, Gilman, Kensett, and Cate are entitled to have the said locomotives in perfect order and condition, and receive rent as aforesaid up to the time when they retake them from said railroad company.

(Sgd.) THE CENTRAL RAILROAD OF IOWA,
ISAAC M. CATE, *President.*
[SEAL.] D. U. PICKERING, *Gen'l Supt.*
S. G. BALL, *Secty.*

Statement of amount due Messrs. Abbott, Kensett, Gilman, and Cate, April 1st, 1875, for leased engines, as per their proposition for sale of same to the company:

Cr.

Original cost of Advance and Volunteer		$22,950 00
" " " Pickering and Russell		30,000 00
Int. at 7 per cent from average date of delivery (Aug. 7th, '73)		6,115 72

Dr.

To cash rec'd Novr. 12th, '74	$6,000 00	
" " " Jany. 5, '75	8,000 00	
" int. at 7 per cent. to April, 1st, '75	295 94	
" balance	44,769 78	
	59,065 72	59,065 72
Amount due April 1st, 1875, as per proposition	$44,769 78	

E. & O. E.
April 14th, 1875.

The Central Railroad Co. of Iowa in account with Abbott, Kensett, Gilman, and Cate.

Dr.

April 14, 1875.

For rental of locomotives Advance, Volunteer, Pickering, and Russell at $2,800 each per annum, payable monthly, from average date of delivery to above date, ("Advance," "Volunteer," June 1st delivered; "Pickering," Sept. 30th, and "Russell," Oct. 15th, 1873.) Average date of delivery Aug. 7, 19 mo. and 24 ds., rent at $2,800 each per annum	$18,455 91
Interest at 6 per cent per annum to above date	866 34
	19,322 25

1874.	Contra.		
Nov. 12th, by cash		$6,000 00	
1875.			
Jan. 5th " "		1,000 00	
Apr. 1st, int. on same to date		253 67	
By balance		5,068 58	19,322 25
To balance due April 1st, 1875			5,068 58

E. & O. E.
April 14, 1875.

(Endorsed:) 501. The Farmers' Loan & Trust Co. v. The Central R. R. of Iowa et al. In Cir. Ct. U. S. In re Horace Abbott and Locomotives. Original. Filed May 1, 1875. George B. Corkhill, clerk.

Afterwards, to wit, on the 21st day of October, the same being of the October term, 1875, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States Circuit Court District of Iowa, October term, 1875.

THURSDAY, *October 21st*, 1875.

FARMERS' LOAN AND TRUST COMPANY
vs.
THE CENTRAL RAILROAD COMPANY OF IOWA, "Horace Abbott, Thomas Kensett, John S. Gilman, and Isaac M. Cate, Petitioners and Interpleaders." } No. 501, Eq.

It is ordered herein that the balance due the above petitioners for four locomotive engines mentioned in their petition, to wit, forty-four thousand seven hundred and sixty-nine dollars and 78 cents as principal, with the interest thereon at seven per cent. per annum from April 1, 1875, be paid by the receiver to said petitioners, from time to time, as the earnings of the road and the condition of the funds in his hands will in this judgment warrant.

(S'g'd) JOHN F. DILLON, *Judge*.

* * * * * * * * * *

On the 9th day of March, 1875, the Mowry Car and Wheel Works, by its attorney, filed in said clerk's office its petition, which said petition is in the words and figures following, to wit:

To the Hon. John F. Dillon, Judge of the Circuit Court of the United States for the District of Iowa.

The petition of the Mowry Car and Wheel Works of Cincinnati, in the State of Ohio, respectfully represents, that heretofore, and on the 27th day of September, 1872, the Mowry Car and Wheel Works, your petitioner aforesaid, and the Central Railroad Company of Iowa, made and entered into a certain agreement in writing, of which a full and true copy is hereto annexed.

That in pursuance of said agreement your petitioner aforesaid has built and delivered to the said Central Railroad Company of Iowa the cars therein mentioned, and has in all respects fully performed all the conditions upon your petitioner imposed by the said agreement.

That the said Central Railroad Company of Iowa is now justly indebted to your petitioner thereon in the sum of forty-seven thousand and thirty-one dollars and seventy-four cents, with interest, as is more fully set forth in your petitioner's true statement hereto annexed of the indebtedness of the said railroad company to your petitioner.

Your petitioner further respectfully shows that, on the seventh instant, in the case of the Farmers' Loan and Trust Company et al. vs. The Central Railroad of Iowa, in the Circuit Court of the United States for the District of Iowa, an order was duly made by and in which D. N. Pickering was appointed receiver of said railroad, and to take full charge of all the property, income, profits, earnings, and receipts thereof, and that the said receiver pay out of the income, receipts, and earnings of the road no debt or expense of any kind without special order.

Wherefore your petitioner prays that an order may be granted directing the aforesaid receiver to pay to your petitioner the amount of your petitioner's said claims, as herein set forth, out of the income, receipts, and earnings of said railroad, or out of any moneys in the hands of said receiver applicable to the payment thereof, at such time as the said receiver may be in funds so to do.

(Sgd.) MOWRY CAR AND WHEEL WORKS,
By CHARLES B. PEET, *Vice-Prest.*

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK. } *ss.*

I, Charles B. Peet, do hereby make solemn oath that I am vice-president of the Mowry Car and Wheel Works, the petitioner mentioned and described in the foregoing petition, that the statements therein contained are true, according to the best of my knowledge, information, and belief.

[SEAL.] (Sgd.) J. B. NONES,
Notary Public, New York,
Ex-offo. U. S. Commissioner,
No. 91 *Duane street, cor. Broadway.*

$7,071.61. NEW YORK, *July* 13, 1874.

Four months after date we promise to pay to the order of Mowry Carwheel Works seventy hundred and seventy-one and $\frac{61}{100}$ dollars, at 1st Natl. Bank, Marshalltown, Iowa.

Value received with N. Y. exchange.

(Sgd.) THE CENTRAL R. R. CO. OF IOWA.
ISAAC M. CATE, *President.*

$739. Due Nov. 16, '74.

$7,071.61. NEW YORK, *July* 27, 1874.

Four months after date we promise to pay to the order of Mowry Car and Wheel Works seventy hundred and seventy-one and $\frac{61}{100}$ dollars, at 1st Natl. Bank, Marshalltown, Iowa. Value received with N. Y. exchange.

(Sgd.) THE CENTRAL R. R. CO. OF IOWA.
ISAAC M. CATE, *President.*

$740. Due Nov. 30, 1874.

$7,071.60 NEW YORK, *July* 13, 1874.

Five months after date we promise to pay to the order of Mowry Carwheel Works seventy hundred and seventy-one and $\frac{61}{100}$ dollars, at 1st National Bank, Marshalltown, Iowa. Value received with N. Y. exchange.

(Sgd.) CENTRAL R. R. CO., OF IOWA.
ISAAC M. CATE, *President.*

$741. Due December 16, 1874.

$7,071.60. NEW YORK, *July* 27, 1874.

Five months after date we promise to pay to the order of Mowry Car and Wheel Works seventy hundred and seventy-one and $\frac{61}{100}$ dollars, at 1st National Bank, Marshalltown, Iowa. Value received with N. Y. exchange.

(Sgd.) THE CENTRAL R. R. CO. OF IOWA.
ISAAC M. CATE, *President.*

$742. Due Dec. 30, '74.

$5,836.86. BOSTON, 17*th September*, 1874.

Four months after date, for value received, the Central Railroad Company of Iowa promise to pay to the order of the Mowry Car and Wheel Works fifty-eight hundred and thirty-six dollars $\frac{86}{100}$, payable at 1st National Bank, with exchange on New York.

Marshalltown, Iowa.

(Sgd.) ISAAC M. CATE, *President.*

$5,836.86. BOSTON, 20*th September*, 1874.

Four months after date, for value received, the Central Railroad Company of Iowa promise to pay to the order of the Mowry Carwheel Works fifty-eight hundred and thirty-six dollars $\frac{86}{100}$, payable at 1st National Bank, with exchange on New York.

Marshalltown, Iowa.

(Sgd.) ISAAC M. CATE, *President.*

$7,071.60. BOSTON, 30*th Oct.*, 1874.

Three months after date, for value received, the Central Railroad Company of Iowa promise to pay to the order of the Mowry Car and Wheel Works seventy hundred and seventy-one dollars $\frac{60}{100}$, payable 1st National Bank, with exchange on New York.

Marshalltown, Iowa.

(Sgd.) ISAAC M. CATE, *President.*

Articles of agreement made this 27th day of September, 1872, between the Mowry Car and Wheel Works, of Cincinnati, in the State of Ohio, party of the first part, and the Central Railroad Company of Iowa, party of the second part. It is hereby mutually covenanted, promised, and agreed by and between the foregoing parties, as follows:

The party of the first hereby agrees to sell and deliver to the party of the second part thirty box-cars, to be built according to the drawings furnished by the party of the second part, with iron trucks to be made according to the specifications furnished by the Burlington & Missouri Railroad Company, at the price of one thousand dollars for each car, and also seventy box-cars, which are to be thirty feet long, with the usual width and height, and with similar trucks, at the price of eight hundred and sixty dollars for each of said cars. All the said one hundred box-cars are to be delivered on the track of the Pittsburg, Cincinnati and St. Louis Railroad Company at Cincinnati, Ohio, on or before the first day of December next, in lots or installments of ten or fifteen cars at a time, as may be most convenient to the said party of the first part.

The party of the second part hereto agrees to purchase the said one hundred box-cars at the prices above mentioned, to be paid for and secured as follows:

On the delivery of each lot or installment of cars at Cincinnati the said party of the second part is to give to the said party of the first part the promissory notes of the said party of the second part for the cars so delivered, payable six months from date with interest at the rate of seven per cent. per annum, and as collateral security therefor the said party of the second part will deposit with the said party of the first part the third-mortgage bonds of the said party of the second part for the amounts of said notes, to be computed at the rate of sixty-five cents on the dollar on the par value of said bonds. But it is hereby mutually understood and agreed between the aforesaid parties that so long as all or any of the said promissory notes shall not have matured or after maturity shall remain unpaid, the title to the cars for which said notes shall have been given shall remain in the party of the first part and the said party of the second part shall have no property or title therein.

And it is further agreed that if any of said notes shall not be paid at their maturity the said party of the second part shall pay monthly to the said party of the first part the sum of fifty dollars upon each car remaining unpaid for until the full amount of the notes given therefor shall be fully paid, with the interest thereon at the rate of twelve per cent. per annum from the maturity of said notes respectively.

And it is further agreed that in case any of said monthly installments shall not be promptly paid the said party of the first part shall have the right to enter upon the premises of the said party of the second part, or wherever else the said cars may be, and to take

them into their own possession without any let, hindrance, or interference on the part of the said party of the second part hereto:

And thereupon the said party of the first part shall proceed, with reasonable diligence, to sell at public auction at ——, on the line of the railroad of the said party of the second part, giving thirty days' notice of the time and place of said sale, so many of said cars as may be necessary to satisfy and discharge the amount then due and owing to the said party of the first part. *In case* there should be any deficiency in the proceeds of such sales to pay such amount, the party of the first part is hereby authorized and empowered to sell, in the city of New York, at public auction, or at the stock exchange in said city, on thirty days' notice, so many of the third-mortgage bonds of the said party of the second part, herein agreed to be deposited with the said party of the first part, as may be necessary to satisfy and discharge said deficiency.

In witness whereof the president of the respective corporations, parties of the first and second parts hereto, have hereunto affixed their signatures, the day and year first above written.

(Signed.) A. L. MOWRY, *President,*
President of the Mowry Car and Wheel Works.
C. C. GILMAN,
President of the Central Railroad Company of Iowa.

(Endorsed:) U. S. Cir. Ct., Dist. of Iowa. Mowry Car and Wheel Co. of Cincinnati vs. C. R. R. Co. of Ia. Petition of Car Co. Filed Mar. 9, 1875. George B. Corkhill, clerk.

On the 21st day of October, the same being of the October term, 1875, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States Circuit Court, District of Iowa, October term, 1875.

THURSDAY, *October* 21, 1875.

THE FARMERS' LOAN AND TRUST CO.
vs.
THE CENTRAL RAILROAD CO. OF IOWA, THE Mowry Car and Wheel Works, petitioners.

It is ordered herein that the balance due the above petitioners for the one hundred cars mentioned in his petition, not exceeding forty-seven thousand and thirty-one dollars and 74 cents as principal, be paid by the receiver to said petitioners from time to time as the earnings of the road and the state of the funds in his hands may in his judgment warrant.

(Signed.) JNO. F. DILLON, *Judge.*

On the 21st day of October, 1875, the same being the October term of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States Circuit Court, District of Iowa, October term, 1875.

THURSDAY, *October* 21*st*, 1875

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE CENTRAL RAILROAD COMPANY OF IOWA, JOHN S. Newberry and others, Interpleaders. } No. 501. Eq.

And now, on this day, to wit, October 21st, 1875, the parties aforesaid appeared by their respective attorneys of record and consent that the interplea of John S. Newberry and others, duly filed herein, be taken as confessed, and it is so ordered and adjudged.

And it appearing to the court that the two hundred cars mentioned in said interplea have been required for the successful operation of the railroad of said railroad company, and that they are still so required, and that the same have been continuously in the service and employment of the receiver of the property and assets of said railroad company for the last eleven months, without any compensation having been made to said interpleaders therefor.

And, whereas, D. N. Pickering, the receiver aforesaid, in compromise and adjustment of the claim of said interpleaders for such service and for the value of said cars has entered into a contract with said interpleaders in words and figures following, to wit:

This agreement, made and entered into this —— day of October, 1875, by and between D. N. Pickering, the receiver of the property and assets of the Central Railroad Company of Iowa, of the first part, and John S. Newberry and James M. Millan of Detroit, Michigan, Warren Currier, William McMillan, and James Thomson of St. Louis, Missouri, trustees of an association known as the St. Louis and Northern Car Company, parties of the second part, witnesseth:

That said first party, in consideration of the agreement of the second party and in modification and enlargement of the contract between said railroad company and said second parties, of September *to* 1873, for the rental, ultimate purchase of two hundred cars, as set out in the interplea of second parties now on file in the office of the clerk of the Circuit Court of the United States from the District of Iowa, in a cause now pending in said court, wherein the Farmers' Loan and Trust Company 's plaintiff, and said railroad company is defendant, and the said second parties are interpleaders, has agreed to pay to said second parties at the city of St. Louis, in the State of Missouri, the sum of one hundred and twenty-five thousand seven hundred and thirty-six dollars, in the time and manner stated below, to wit: Twenty-four thousand in twelve equal consecutive monthly payments of two thousand dollars each, commencing on the first day of December next; also, the balance of said sum, to wit, one hundred and one thousand seven hundred and twenty-six dollars in thirty-six equal consecutive monthly payments, commencing on the first day of December, 1876; in addition

to these payments said first party agrees to pay the interest on said principal sum and the successive balances thereof semi-annually, to wit, on the first day of May and the first day of November of each year, the sums to be computed and paid at the rate of seven per cent. per annum from the first day of November next. On the payment in full of said principal sum and the interest thereon as aforesaid, the title to said cars, it is agreed shall vest in said railroad company or its successors, and not before that or otherwise.

And the second party, in consideration of the agreement of the first party, as stated above, agrees to accept said several payments in lieu of the rents and other payments called for by said contract between said second parties and said railroad company, and to permit said cars to remain upon said railroad, and in the service of said railroad company and its successors and assignees without charge for rent therefor, so long as said payments shall be faithfully and promptly made. And it is further agreed that this contract shall, with permission of the court, be placed on file in the office of the clerk of said circuit court, in connection with said interplea, as constituting a part of the records and proceedings therein, and as forming in part a foundation for an order or decree of the court in respect to said cars, and it is expressly understood and agreed between the parties that this contract shall not be binding on either or have any force or validity whatever against either until the same is approved by the court aforesaid or the judge thereof.

Executed the date aforesaid.

D. N. PICKERING,
Receiver Central Railroad of Iowa.

JOHN S. NEWBERRY,
JAMES McMILLAN,
WILLIAM McMILLAN,
JAMES THOMPSON,
} *Trustees.*

By their agent and attorney—

WARREN CURRIER.
WARREN CURRIER, *Trustee.*

And whereas it appears that said contract is reasonable and just, and promotive of the interest of said railroad company and of its creditors, and that the same was made with the consent and approbation of the different parties to the proceedings:

Now, therefore, it is considered, ordered, and adjudged by the court that said contract, as above recited, be approved, and the same is approved, ratified, and confirmed accordingly.

And it is further considered, ordered, and adjudged by the court that said sum of one hundred and twenty-five thousand seven hundred and thirty-six dollars specified in said contract, with the interest thereon be paid to said interpleaders out of the assets, property, and income of said railroad company in the time and manner provided in said contract as a legal and valid claim against the same

created by the proper and legal act of said receiver in the due administration of his office under the order and direction of the court, and it is ordered and adjudged that said sum be paid to said interpleaders in the time and manner aforesaid as a claim having precedence and priority over the claims of the plaintiff in the suit above entitled and of the claims of the various parties represented by said plaintiff in its capacity and relation as trustee.

(Sgd.) JNO. F. DILLON, *Judge.*

On the 8th day of May, 1875, the Haskell & Barker Car Company, by its attorney, filed in said clerk's office its petition of intervention, which said petition is in the words and figures following, to wit:

CENTRAL RAILROAD OF IOWA,
AUDITOR'S OFFICE,

T. J. FLETCHER, Auditor.

MARSHALLTOWN, IA., *April* 21, 1875.

D. N. Pickering, Esq., Gen'l Supt. and Receiver.

Dear Sir: The papers in the Haskell & Barker claim are returned herewith. I find the amount due them March 1, 1875, to be sixty-five hundred seventy-one and $\frac{18}{100}$ ($6,571\frac{18}{100}$) dollars, as per statement below. Yours respectfully,

(Sgd.) T. J. FLETCHER, *Auditor.*

On note dated June 7th, '72—@ 6 months.....		$5,202 08
Balance of interest due Mch. 1, 1875.....		736 96
		$5,939 04
On note dated June 7th.		
72. @ 4 mos....	$5,143 47	
Less amt. of partial payments.....	4,993 00	
	150 47	
Balance of interest due Mch. 1st.....	481 67	$632 14
		6,571 18

N. B. With the correction herein made, the undersigned recommends the passing the account by the court and making order as prayed for.

(Sgd.) D. N. PICKERING, *Receiver.*

UNITED STATES OF AMERICA,
DISTRICT OF IOWA. } *ss.*

In the Circuit Court of the United States for the District of Iowa.

FARMERS' LOAN AND TRUST COMPANY OF NEW YORK
vs.
THE CENTRAL RAILROAD COMPANY OF IOWA.

To the Honorable Judge of said Court.

Your petitioner, Haskell & Barker Car Company, a corporation duly created by the laws of the State of Indiana, would respectfully represent unto your honor, that the defendant, the Central Railroad Company of Iowa, on the 20th day of May, A. D., 1872, entered into a certain contract or agreement in writting with your petitioner, a copy of which is hereto attached and marked exhibit "A," and to which your petitioner begs leave to refer as a part of this petition, and as showing in detail the contract between the parties thereto.

Your petitioner further shows that in pursuance and in accordance with the terms of said contract your petitioner delivered to said railroad company two first-class passenger-cars and two baggage-cars; and said railroad company in addition to its cash payments executed and delivered therefor to your petitioner its two certain promissory notes, each dated June 7, 1872, and due, respectively, in four and six months after date, each of said notes including in their principal amount interest at the rate of seven per cent. per annum until maturity, and bearing interest after due at the rate of ten per cent. per annum, the first of the said notes being for the sum of $3,143.47, the second being for the sum of $5,202.08.

Your petitioner further shows that only partial payments have been made upon said notes and that there is now justly due and owing to your petitioner on said first note the sum of...	$659 75
And on said second note.....	5,955 86
Making a total of.....	$6,615 61

Which amount your petitioner avers is wholly and justly due and unpaid, and owing your petitioner under said contract after allowing all just off-sets, deductions, and allowances.

Your petitioner begs leave to refer to a statement of the amount so due as aforesaid, hereto attached and marked exhibit "B."

Your petitioner further shows that by the terms of said contract said cars were to remain the property of your petitioner until paid for in full, and that said cars should be and remain personal property until the price agreed upon should be fully paid, and that if default should be made by said railroad company in the payment of any or either of said notes your petitioner should have the right to reclaim and take possession of said cars or any one or more of them, wherever the same may be, and recover them from the possession of said railroad company or any person or corporation having the possession of the same, and sell or otherwise dispose of the same as it shall think proper. Wherefore, your petitioner prays that the receiver in the above-entitled cause may be ordered and directed by this honorable court to pay to your petitioner the amount due it

from said railroad company upon said notes, according to the terms of said contract.

And as in duty bound your petitioner will ever pray, &c.

March 1, 1875.

(Sgd.) HASKELL & BARKER CAR CO.,
By F. HASKELL, *President.*

STATE OF ILLINOIS. }
COUNTY OF COOK. } *ss.*

On this sixth day of March, A. D. 1875, personally appeared before me, Frederick Haskell, and made oath and says, that he has heard read the foregoing petition, and knows the contents thereof, and that the same are true of his own knowledge. Affiant further says that he is president of Haskell and Barker Car Company, and makes this affidavit on its behalf.

Subscribed and sworn to before me, this sixth day of March, 1875.

(Sgd.) F. HASKELL.

[SEAL.] EDWARD W. RUSSELL,
Notary Public in and for the County of Cook, State of Illinois.

Exhibit "A."

This agreement, made this 20th day of May, 1872, by and between the Haskell and Barker Car Company, of Michigan City, Indiana, party of the first part, and the Central Railroad of Iowa, party of the second part—

Witnesseth, that said party of the first part, in consideration of the agreements and covenants of the party of the second part hereinafter contained, agree to furnish for the use of the said party of the second part two first-class passenger-cars and two baggage-cars, delivered on the track of the Michigan Central R. R. Co., at Michigan City, Indiana, on or before the 10th day of June next, said cars to remain the property of the said party of the first part until the said party of the second part shall have fully complied with its agreements hereinafter contained, and they shall have been paid for in full by said party of the second part; and the said party of the second part agrees, upon receiving said cars, or any portion thereof, to pay to the said party of the first part the sum of $1,700 dollars on each passenger-car, and $783.33 on each baggage-car per car for each and every car so furnished and received by it, and to execute and deliver to the parties of the first part its notes for the further sum of $1,700 on each passenger-car, and $783.33 on each baggage-car, payable in 4 months, and $1,700 on each pass. car, paya. in 6 months, and $783.33 on each baggage-car, paya. in 6 months, with interest at 7 p'r c't p'r annum. Notes paya. Merchants' National Bank, at Chicago, Ill.

The full price of each passenger-car is $5,100, the full price of each baggage-car is $2.350, paid and agreed to be paid for the furnishing of each and every of said cars; and upon the payment of said notes, and each and every of them, together with the said cash payment of $4,966.60, forty-nine hundred sixty-six and $\frac{66}{100}$ dollars, the said parties of the first part agree to sell and convey to said party of the second part all and every of the cars so furnished and received by said second party.

It is expressly understood and agreed by and between the said parties, that said cars shall be and remain personal property until the price above specified shall be fully paid, and that if default shall be made by said party of the second part in the payment of any or either of the notes so to be given by it as aforesaid, or in the performance of any of its agreements herein contained, the said party of the first part shall have the right to reclaim and take possession of said cars, or any one or more of them, wherever the same may be, and recover them from the possession of said party of the second part, or any person or corporation having the possession of the same, and sell or otherwise dispose of the same as they shall think proper.

(Sgd.) THE CENTRAL R. R. CO. OF IOWA,
[Stamps.] By C. C. GILMAN, *Prest.*

[Copy of contract.] F. HASKELL,
Prest. of Haskell and Barker Car Co.

Exhibit "B."

The Central Railroad Company of Iowa,
To Haskell and Barker Car Co., Dr.

1872.		
June 7, for one note at 4 months	$5,143 47	
Int. to Mch. 1, '75	1,191 97	
	6,335 44	
By payments and int. to Mch. 1, '75	5,675 69	
Bal. due Mch. 1, '75		$659 75
June 7, for one note at 6 months	$5,202 08	
Int. to Mch. 1, '75	1,243 90	
	6,445 98	
By payments and int. to Mch. 1st, '75	490 12	
Balance due Mch. 1st, '75		5,955 86
Total		$6,615 61

The notes draw ten per cent. interest after due.

STATE OF ILLINOIS, }
COUNTY OF COOK. }

Frederick Haskell, of the city of Chicago, being first duly sworn, on oath deposes and says that the foregoing account marked exhibit "B," of Haskell and Barker Car Company against the Central Railroad Company of Iowa, is just and unpaid, and that all credits and assets thereto have been allowed. That affiant is president of said car company and makes this affidavit on its account.

(Sgd.) F. HASKELL.

Subscribed and sworn to before me, this 6th day of March, A. D. 1875.

[SEAL.] (Sgd.) EDWARD W. RUSSELL,
Notary Public in and for the County of Cook and State of Illinois.

(Endorsed:) Original Petition. Haskell and Barker Car Company to the U. S. Circuit Court District of Iowa in the case Farmers' Loan and Trust Company vs. Central R. R. Co. of Iowa. A copy of this petition has been served on me, 3 May, 1875. Sgd. Jas. Grant, for F. L. and T. Co. Filed May 8, 1875. George B. Corkhill, clerk.

On the 21st day of October, the same being the October term, 1875, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States Circuit Court, District of Iowa, October Term, 1875.

THURSDAY, *October* 21*st*, 1875.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE CENTRAL RAILROAD COMPANY OF IOWA, HASKELL and Barker Car Company, Petitioners. } No. 501. Eq.

It is ordered herein that the balance due the above petitioners for cars, as alleged in their petition, not exceeding in all the sum of sixty-five hundred and seventy-one and $\frac{18}{100}$ dollars, as principal, to be paid them by the receiver from time to time as the earnings of the road and the state of the funds in his hands may, in his judgment, warrant.

(Sgd.) JOHN F. DILLON, *Judge.*

DECREE OF FORECLOSURE IN COURT BELOW.

The Farmers' Loan and Trust Company, Trustee,	United States Circuit Court for the District of Iowa.
vs.	In Equity.
	October Term, 1875.
The Central Railroad Company of Iowa.	No. 501.
	Friday, Oct. 22d, 1875.

This cause coming on to be heard upon the pleadings, the proofs taken, and the reports of the master, Lewis M. Fisher, heretofore filed in said cause, and the several parties in interest appearing by counsel, the cause was submitted and taken under advisement by the court, and now said court finds, orders, and decrees:—

First.—That the first mortgage in the bill set forth was duly executed and delivered to complainant, as trustee for the owners of the bonds therein described, on the fifteenth day of July, 1869, for the purpose of securing the payment, principal and interest, of the certain bonds of said Central Railroad Company of Iowa, amounting in the aggregate to the total sum of $3,700,000.

That default in payment of the interest accruing on said bonds has been made, there being now past due the sum of $623,334.99 up to October 15th, 1875, which amount thus due, together with the principal sum of

$3,700,000 forms the first and paramount mortgage now upon the property in the bill described. That default has been made in the performance of the conditions of said mortgage, through the non-payment of said interest as aforesaid, entitling complainants to a decree of foreclosure, and the court finds there is due on said mortgage for principal and interest the sum of $4,623,334.99 in gold, on the 15th of October, 1875, which, now it is ordered that defendant, the Central Railroad Company of Iowa, shall pay in ten days from this date, with seven per cent. interest, in gold, from the 15th of October, 1875; and if said defendant shall not pay the same, then the mortgagees of the second and third mortgage and said judgment creditors, or any of them, in the order of their respective liens, shall pay the same, and upon such payment, with costs, the said plaintiffs shall satisfy and discharge said mortgage debt, interest and costs, and in default of said payment by any of said parties, their equity of redemption in said premises is forever barred and foreclosed.

Second.—That the second mortgage in the bill described was duly executed and delivered to complainant, as trustee for the owners of the bonds therein described, on the fifteenth day of April, 1871, for the purpose of securing the payment, principal and interest, of the certain bonds of respondent, in said mortgage described, amounting in the aggregate to the total sum of $925,000; that there is now justly owing to the holders of the said bonds the sum of $1,136,246.86, including principal and unpaid interest up to October 15th, 1875.

That the said second mortgage, and the bonds secured thereby, are a lien upon the property of respondent in said bill described, dating from the said fifteenth day of April, 1871, being next in priority to the lien of said first mortgage hereinbefore described. That said respondent has

made default in payment of the interest coming due upon said several bonds secured by said mortgage.

Third.—That the third mortgage in the bill described was executed and delivered by respondent to the complainant as trustee, on the fifteenth day of May, 1872, for the purpose of securing payment of certain bonds in said mortgage described.

That there is now outstanding $420,000 of the bonds secured by said third mortgage.

Fourth.—The court further finds, that with the view to prevent a sacrifice of the mortgaged property by a forced sale, in case of default, it was expressly agreed and stipulated in said first mortgage or trust deed, that in case of any judicial foreclosure sale of the mortgaged property, under decree of court, upon request of a majority of the bondholders, the said trustee should purchase the premises in the mortgage described for the use and benefit of the bondholders, and that upon such purchase, the title of said property should vest in said trustee, and that no bondholder should have any claim to the premises, or to the proceeds thereof, except for his *pro rata* share of the proceeds of said purchased premises, as represented in a new company or corporation, to be formed and organized upon such terms, conditions, and limitations, and in such manner as the holders of a majority of said outstanding first mortgage bonds secured by said mortgage should in writing request or direct.

That for the purpose of carrying out these promises in said mortgage contained, and in view of the fact found by the master and confirmed by the court, that the mortgaged property will not sell in cash for near enough to pay the amount due thereon; and that the several parties in interest, including the first, second, and third mortgage

bondholders, general creditors, and stockholders in said Central Railroad Company of Iowa, have united in asking the court to so order the foreclosure and sale of said mortgaged property as to preserve the priority of the first mortgage bondholders, and at the same time permit the holders of the other subsequent liens and interests to participate in the benefit of such sale and foreclosure, it is therefore further ordered and decreed, that Lewis M. Fisher be and is hereby appointed a master, for the purpose of making and conducting the sale under the decree of said mortgaged property; the same to be sold under the provisions in said first mortgage in the bill described.

The said sale to be made forthwith, in default to pay as herein decreed, at the front door of the county courthouse, in the city of Marshalltown, Iowa, four weeks' notice of the time and place of said sale to be given by said master, by publishing notice thereof in "The Financier," New York, and in "Des Moines Register," and one newspaper published in Marshalltown, Iowa. That such property be sold to the highest and best bidder; and that the master make full report of his proceedings to this court, for its consideration and approval. The said sale so made by said master not to be deemed to be final until approved by this court.

Fifth.—That the said Farmers' Loan and Trust Company, complainant herein, for the purpose of carrying out the agreement of the parties to said mortgage, is hereby authorized and directed to bid at the sale of said mortgaged property, as trustee for the first mortgage bondholders bidding thereat, at least the amount of principal and interest of said first mortgage bonds.

That if said trustee, as aforesaid, shall become the purchaser of said property at such sale, the title shall pass absolutely to said trustee, subject, however, to the trusts

herein indicated on behalf of the several parties in interest, being the first, second, and third mortgage bondholders, creditors and stockholders of the Central Railroad Company of Iowa; and said property shall be conveyed by said trustee to a corporation organized, or to be organized, for the purpose of acquiring said property, under the provisions of said first mortgage, and of this decree, and to be approved by a majority of said first mortgage bondholders, in which said corporation the controlling interest and power of management shall be given to the first mortgage bondholders in such manner as the majority of such first mortgage bondholders shall indicate and provide, and in which the second mortgage bondholders shall receive a second class of stock for the full amount, principal and interest, of said second mortgage bonds; and in which corporation the third mortgage bondholders and general creditors shall receive common stock at par for the respective amounts due them; and in which the stockholders of the defendant shall receive common stock at the rate of one dollar in the new corporation for every three dollars of stock held by them in the defendant corporation.

It is further ordered that said trustee shall make full report of its proceedings under this decree to this court, and shall submit the conveyance to be made to the new corporation herein provided for, together with the articles of incorporation of said company, to this court for approval and confirmation.

Sixth.—That if any party, other than the complainant, should become the purchaser of said property at such sale, such person shall deposit with the master, so soon as said property is struck off to him, the sum of $100,000 in gold as earnest money. And if such purchaser shall fail to do so, such failure shall be deemed a withdrawal of his

bid, and said master shall forthwith again offer said property for sale under the provisions of this decree.

That, as it is impossible to properly separate said property into parcels, the master is directed to sell the said mortgaged property and everything covered by the mortgage together as an entirety.

Seventh.—That the owners of said second and third mortgage bonds, the general creditors and stockholders of respondent, shall have the right to redeem said mortgaged property at any time within one year from the date of said sale, but if said property is not redeemed within said year from the date of said sale, then the right of redemption of said parties and all of them shall be forever barred and foreclosed. Said redemption herein last named shall be the amount of principal and interest herein named, with ten per cent. interest in gold.

Eighth.—That the right of the several parties to this suit claiming liens by judgment or otherwise upon the property of defendants, and of the several parties claiming rights or equities in and to said property, or any property in the use of said railroad company, or any part thereof, by virtue of contracts, or cases whereby material, labor, or property has been furnished for or placed upon said defendants' road, shall not be affected by this decree, the same being taken subject to the rights and equities of said parties as the same may be established and declared hereafter by this court.

Ninth.—That John N. Rogers be and is hereby appointed special master to ascertain and report to this court the proper and total amount of costs, fees, and expenses attending these foreclosure proceedings, which said costs, fees, and expenses shall be paid out of any funds in. the

hands of a receiver not otherwise appropriated, and any balance left unpaid shall be a lien upon said mortgaged property in the hands of the trustee, and payment thereof shall be required of said trustee before delivering over said property to any company organized to receive and hold the same under the provisi ns of the trust deed and of this decree.

(Signed) JOHN F. DILLON,
Judge.

ORDER MAKING APPELLANTS PARTIES.

The Farmers' Loan and Trust Company, Trustee,

vs.

The Central Railroad Company of Iowa, Hugh Thornton, The Le Grand Quarry Company, Lush, Carton & Co., M. M. St. John, W. H. Moore, N. J. Boardman, C. M. Stewart, Ole Oleson, I. M. Cate, J. S. Gilman, Horace Abbott, Delano Smith, Edwin Williegood, John Turner, and G. W. Maybury.

United States Circuit Court, District of Iowa.

In Equity.

October Term, 1875.

No. 501.

Friday, January 14th 1876.

And now, on this day, to wit, January 14th, 1876 (it still being of the October Term, 1875), this cause came on for hearing upon the motion of Russell Sage, James Buell, and N. A. Cowdrey, filed herein January 13th, 1876, to set aside the decree of this court herein rendered October 22d, 1875, which motion, after hearing counsel for and

against the same, was by the court denied, to which order the said Sage, Buell, and Cowdrey then and there excepted.

And on the same day, to wit, January 14th, 1876 (it still being of the October Term, 1875), this cause came on for hearing upon the petition of said Russell Sage, James Buell, and N. A. Cowdrey, filed herein January 11th, 1876, stating that they were owners of first mortgage bonds to over $200,000, at their face value, exclusive of interest, and praying to intervene in this suit and become parties thereto.

And upon the petition in behalf of the said Sage, Buell, and Cowdrey by the said Farmers' Loan and Trust Company, trustee and the complainant herein, presented to the Circuit Court judge at St. Paul, December 16th, 1875, as follows:—

"Now comes the Farmers' Loan and Trust Company, as trustee in said cause for Russell Sage, James Buell, and N. A. Cowdrey and plaintiff in said cause, and prays of the court that an appeal may be allowed to said plaintiff, and tenders to the court an appeal bond, with a request that the same may operate as a *supersedeas*" (signed Farmers' Loan and Trust Company, by Grant and Smith, solicitors); and his order thereon, which is as follows:—"In this case an appeal is asked by the complainant so far and only so far as it affects the interests of Russell Sage, James Buell, and N. A. Cowdrey.

"I deny the appeal prayed for, because—

"1. The decree in question was entered by consent of all the parties in interest.

("The term at which this decree was rendered has not yet ended, but stands adjourned until in January next, and the proper course for the parties in whose behalf an appeal is sought is for them to appear, and if the decree is erroneously entered or is improper, to apply to be made parties or to have the decree corrected or a new decree entered.)

"2. An appeal cannot be taken on behalf of certain bondholders not parties to the record, leaving the rest of the decree unappealed from. As the trustees (complainants) do not ask for an appeal from the whole decree, I need not consider when they would be justified in a case where there are several millions of dollars of bondholders, who acquiesce in the decree, to appeal at the instance of three bondholders who only claim to hold bonds to the extent of $200,000.

"3. If an appeal could be allowed as asked for, the bond offered is insufficient as to amount to secure costs, damages for delay, and costs and interest on the appeal. The clerk will enter the above order of record, denying the appeal prayed for.

"(Signed) JOHN F. DILLON,
"Circuit Judge.

"AT CHAMBERS, ST. PAUL, December 16th, 1875."

Upon consideration of the premises, it is now by the court ordered that Sage, Buell, and Cowdrey be and they are hereby permitted to become so far parties to the suit as to prosecute, if they so elect, for the protection of their said several interests therein and in their own names, an appeal to the Supreme Court from the decree entered herein on the twenty-second day of October, 1875, and if said Sage, Buell, and Cowdrey desire said appeal to operate as a *supersedeas*, the bond for that purpose is fixed at the sum of $1,000,000, to be given in thirty days from this date, and if so given said appeal shall be regarded as taken and perfected on the sixteenth day of December, 1875, the said parties having then applied as aforesaid for said appeal, and having delayed the same until this time by order of the judge at chambers, as above shown; but if said appeal is not to operate as a *supersedeas* the bond is fixed at the sum of $2000.

And as to whether the said decree of October 22d, 1875, rendered herein, was a decree by consent, the following are the facts in addition to those appearing on the record and master's reports and the proofs on file, to wit:—

At the said October Term, the complainants herein, viz., the Farmers' Loan and Trust Company, appeared by Solicitor James Grant, Esq., the Iowa Central Railroad Company by its solicitors, and the other defendants by their attorneys, and there also appeared several attorneys for committees of various bondholders; and all of said parties, the complainants and the defendants, agreed to the decree as entered, the same having been the result of consultation and compromise among the parties in interest, and the same was entered as the result of such agreement, and not upon an independent consideration, by the court, of the rights and equities of the various parties.

The above statement that the complainants consented to said decree is to be taken in connection with the following statement:—The solicitor for the said complainants (to wit, the Farmers' Loan and Trust Company), when the draft of said consent decree was presented to the court by the parties in interest, said to the court that the trustee wished faithfully to execute its trust under the direction of the court; that the trustee had reserved the following communication, which he wished to read, and which was read to the court, to wit:—

To the Farmers' Loan and Trust Company, Trustees, &c.
First Mortgage Bondholders,

GENTLEMEN:—We are informed by your counsel, Grant and Smith, that they will ask the court, in the foreclosure suit now pending, to enter such decree as the majority of the bondholders desire, believing that some of the bondholders have other interests to serve than to protect the first mortgage bondholders, and that large numbers of the

bondholders, from want of proper information, have been induced to sign various requests to the court for certain forms of decree injurious to us as bondholders, and being your *cestui que trust* to the amount set opposite our names of the first mortgage bonds, to secure the payment of which you hold the mortgage as trustee for ourselves and others similarly situated, this is to notify you of such interest on our part, and to request you to instruct your counsel to procure the *ordinary decree* of foreclosure and sale, and failing to get this from the court, to take an appeal to the Supreme Court of the United States.

If for any reason you decline to give your counsel such instructions, please inform us, that we may become a party to said proceedings and take such course as we may be advised in the matter. We understood the trust deed to require you to procure the ordinary decree of foreclosure and sale. If the bondholders, or a majority of them, request you to purchase the mortgage premises and to form a new company, that it is competent for you to so do, upon such terms and conditions as a majority of the bondholders desire. But until you do so purchase you are to do all you reasonably can be expected to do to protect the minority as well as the majority of your *cestui que trust*.

Respectfully, your obedient servants,

RUSSELL SAGE, $100,000.
F. LEAKE, by RUSSELL SAGE, $25,000.
JAMES BUELL, $10,000.
EDWIN PARSONS, $13,500.

NEW YORK, October 1st, 1875.

And therewith the said solicitor presented the following petition:—

Now comes the Farmers' Loan and Trust Company and say that since they have filed their petition or information

as to the application of bondholders to have the said road sold, James Buell has deposited with the said trustees $10,000 in value of first mortgage bonds of said company, Frederick Leake has deposited $25,000 of the same, and Russell Sage $101,000 of the same, and said parties demand of said trustees that they procure a foreclosure of said property under said first mortgage, and the plaintiffs ask the advice of the court in the premises.

GRANT & SMITH,
For the Trustees.

And the said solicitor for the complainant thereupon said to the court that it submitted itself to its advice and direction, and was ready to execute any decree the court might see proper to make, and did not otherwise object to the said proposed decree or give the court to understand that it was or would be objected to by the trustee on behalf of any of the *cestui que trust.*

(Signed) JOHN F. DILLON,
J. M. LOVE.

In U. S. Circuit Court, District of Iowa.

IN EQUITY.

Farmers' Loan and Trust Company

vs.

The Central Railroad Company of Iowa et al.

No. 501.

The decree in this case having ordered notice of the sale therein ordered to be published *inter alia* in the "Financier" newspaper of New York, and it appearing that the said "Financier" has been merged in or its name changed to that of the "Public," it is now here, January 8th, 1877, ordered that the said notice may be inserted in the said newspaper called the "Public," with the same effect as if the name of the paper had not been changed. The clerk will enter this order on the first day of the adjourned term.

(Signed) JOHN F. DILLON,
Judge.

Endorsed:—No. 501. Equity. Farmers' Loan and Trust Company *vs.* The Central Railroad of Iowa *et al.* Order as to publication in the "Public" instead of "Financier." Filed January 11th, 1877.

E. R. MASON,
Clerk.

IN THE UNITED STATES CIRCUIT COURT
FOR THE DISTRICT OF IOWA.

The Farmers' Loan and Trust Company

vs.

The Central Railroad Company of Iowa et al.

TO THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF IOWA:

The undersigned, the special master appointed by this court in said cause by the decree thereof, entered on the twenty-second day of October, A. D. 1875, begs leave to report.

That the said Central Railroad Company of Iowa, the second and third mortgage bondholders of said company, and the judgment creditors of said company, all and each of them, wholly failed to pay within ten days from the date of said decree the sum of $4,623,334.99 with seven per cent. interest thereon, all in gold, or any part thereof, as therein required.

And that in pursuance of said decree, and upon the written request of the complainant in said cause, dated June 2d, A. D. 1877, I forthwith proceeded to and did give four weeks' notice of the sale of the Central Railroad of Iowa, by publishing notices of the same once each week for four successive weeks prior to the date appointed for the sale, viz., the eighteenth day of July, 1877, in the following newspapers:—The "Public," published in the city of New York; the "Iowa State Register," published at Des Moines, Iowa; the "Marshall County Times," published at Marshalltown, Iowa.

Copies of said notices, together with proofs of their publication in the several newspapers above named, as aforesaid, are hereto attached, marked Exhibit A. That the publication of said notice required by said decree in the "Financier," by the order of this court, dated January 8th, 1877, was changed to the "Public," of New York City.

That on the eighteenth day of July, 1877, at two o'clock, P. M., on said day, at the front door of the county court house, in the city of Marshalltown, Iowa, I offered for sale, as provided by said decree, the property in said notices described, and then and there sold the same to the Farmers' Loan and Trust Company of the city of New York, in trust for the bondholders of the Central Railroad Company of Iowa, for the sum of five million one hundred and ninety-two thousand three hundred and ninety (5,192,390) dollars.

That the said amount was bid by the said Farmers' Loan and Trust Company, in writing, and was the highest and only bid made at said sale, being the amount of the principal and interest due at said date on the first mortgage bonds of the Central Railroad Company of Iowa.

Said bid is hereto attached and made a part of this report, marked Exhibit B.

A conveyance of the property so sold, as aforesaid, is herewith presented to the court for its approval.

My account for compensation and expenses as special master, under said decree, is hereto attached, marked Exhibit C, amounting to the sum of $637.50, all of which is due and unpaid, and the same is hereby presented for allowance.

All of which is herewith respectfully submitted to your Honors.

(Signed) LEWIS M. FISHER,
Special Master.

MASTER'S SALE,

UNDER DECREE OF FORECLOSURE, IN THE MATTER OF THE CENTRAL RAILROAD COMPANY OF IOWA.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

The Farmers' Loan and Trust Company

vs.

The Central Railroad Company of Iowa et al.

Public notice is hereby given that in pursuance of the decree entered in the Circuit Court of the United States for the District of Iowa, in the above-entitled cause, on the twenty-second day of October, A. D. 1875, I, Lewis M. Fisher, special master in said cause, will, on Wednesday, the eighteenth day of July, A. D. 1877, at two o'clock, P. M., on said day, at the front door of the county court-house in the city of Marshalltown, Iowa, sell at public auction to the highest and best bidder, all the property of the Central Railroad Company of Iowa included in the first mortgage thereof and described therein as follows, to wit:—

"The entire corporate property of the said Central Railroad Company of Iowa, and all its franchises and privileges constructed or to be hereafter constructed, now held and acquired or to be hereafter constructed and acquired, extending from a point in Davis county, on the south line of the State of Iowa, at the intersection of said line by the North Missouri Railroad, to Oskaloosa, in Mahaska county, a distance of about sixty miles, along the line formerly owned by said Iowa Central Railroad Company, and thence northerly to Marshalltown, and thence along and including

the railroad built by the Iowa River Railway Company to Ackley, in Hardin county, and thence northerly to the north line of said State of Iowa at such point as shall be hereafter definitely determined, including all the rights and franchises of the said Iowa Central Railroad Company and of said Iowa River Railway Company, including, also, along the entire line all the right of way acquired by purchase or condemnation, road bed finished and in process of construction, with all material collected for construction or operative purposes, depot grounds, gravel-pits, quarries, and real estate, station-houses, water-tanks, repair and machine shops, turntables, coal houses and sheds, and all things of every name and nature belonging to said party of the first part (the Central Railroad Company of Iowa) and pertaining to said Central Railroad; also, all machinery, locomotives, and rolling stock and all tools and supplies heretofore acquired or which may be acquired by said Central Railroad Company of Iowa."

Dated June 6th, 1877.

LEWIS M. FISHER,
Special Master.

EXHIBIT A.

Affidavit of Publication.

R. P. Clarkson, being sworn, says, that he is publisher of the Iowa State Register, a newspaper published in Des Moines, Polk county, Iowa, and that the notice of which the annexed is a printed copy was published in said Iowa State Register for four consecutive weeks, the first publication being on the tenth day of June, 1877, and the last on the third day of July, 1877.

(Signed) R. P. CLARKSON.

Subscribed and sworn to by the said R. P. Clarkson, before me, this twenty-fourth day of July, 1877.

(Signed) W. W. PIERCE,
Notary Public.

STATE OF IOWA, } ss.
POLK COUNTY, }

MASTER SALE,

UNDER DECREE OF FORECLOSURE IN THE MATTER OF THE CENTAL RAILROAD COMPANY OF IOWA.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

The Farmers' Loan and Trust Company

vs.

The Central Railroad Company of Iowa et al.

Public notice is hereby given that in pursuance of the decree entered in the Circuit Court of the United States for the District of Iowa, in the above-entitled cause, on the twenty-second day of October, A. D. 1875, I, Lewis M. Fisher, special master in said cause, will on Wednesday, the eighteenth day of July, A. D. 1877, at two o'clock P. M., on said day, at the front door of the county court-house in the city of Marshalltown, Iowa, sell at public auction to the highest and best bidder all the property of the Central Railroad Company of Iowa, included in the first mortgage thereof, described therein as follows, to wit:—

"The entire corporate property of the said Central Railroad Company of Iowa, and all its franchises and

privileges constructed or to be hereafter constructed, now held and acquired or to be hereafter constructed and acquired, extending from a point in Davis county, on the south line of the State of Iowa, at the intersection of said line by the North Missouri Railroad, to Oskaloosa, in Mahaska county, a distance of about sixty miles, along the line formerly owned by said Iowa Central Railroad Company, and thence northerly to Marshalltown, and thence along and including the railroad built by the said Iowa River Railway Company to Ackley, in Hardin county, and thence northerly to the north line of said State of Iowa, at such point as shall be hereafter definitely determined, including all the rights and franchises of the said Iowa Central Railroad Company, and of the said Iowa River Railway Company, including also along the entire line all the right of way acquired by purchase or condemnation, road bed finished and in process of construction, with all material calculated for construction or operative purposes, depot grounds, gravel-pits, quarries, and real estate, station-houses, water-tanks, repair and machine shops, turntables, coal houses and sheds, and all things of every name and nature belonging to said party of the first part (the Central Railroad Company of Iowa) and pertaining to said Central Railroad; also, all machinery, locomotives, and rolling stock, and all tools and supplies heretofore acquired or which may hereafter be acquired by said Central Railroad Company of Iowa."

Dated June 6th, 1877.

LEWIS M. FISHER,
Special Master.

EXHIBIT A.

MASTER SALE,

UNDER DECREE OF FORECLOSURE, IN THE MATTER OF CENTRAL RAILROAD COMPANY OF IOWA.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

The Farmers' Loan and Trust Company

vs.

The Central Railroad Company of Iowa et al.

Public notice is hereby given that in pursuance of the decree entered in the Circuit Court of the United States for the District of Iowa, in the above-entitled cause, on the twenty-second day of October, A. D. 1875, I, Lewis M. Fisher, special master in said cause, will on Wednesday, the eighteenth day of July, A. D. 1877, at two o'clock, P. M., on said day, at the front door of the county court-house in the city of Marshalltown, Iowa, sell at public auction, to the highest and best bidder, all property of the Central Railroad Company of Iowa, included in the first mortgage thereof and described therein as follows, to wit:—

"The entire corporate property of the said Central Railroad Company of Iowa, and all its franchises and privileges constructed or to be hereafter constructed, now held and acquired or to be hereafter constructed and acquired, extending from a point in Davis county, on the south line of the State of Iowa, at the intersection of said line by the North Missouri Railroad, to Oskaloosa, in Mahaska

county, a distance of about sixty miles, along the line formerly owned by said Iowa Central Railroad Company, and thence northerly to Marshalltown, and thence along and including the railroad built by the said Iowa River Railway Company to Ackley, in Hardin county, and thence northerly to the north line of said State of Iowa, at such point as shall be hereafter definitely determined, including all the rights and franchises of the said Iowa Central Railroad Company and of the said Iowa River Railway Company, including also along the entire line all rights of way acquired by purchase or condemnation, road bed finished and in process of construction, with all material collected for construction or operative purposes, depot grounds, gravel-pits, quarries, and real estate, station-houses, water-tanks, repair and machine shops, turntables, coal houses and sheds, and all things of every name and nature belonging to said party of the first part (the Central Railroad Company of Iowa,) and pretaining to said Central Railroad; also, all machinery, locomotives, and rolling stock, and all tools and supplies heretofore acquired or which may hereafter be acquired by said Central Railroad Company of Iowa."

Dated June 6th, 1877.

LEWIS M. FISHER,
Special Master.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

A. S. Hale, being duly sworn, deposes and says, that he is the business manager of the "The Public," a paper published weekly in the city of New York, and that deponent has personal knowledge that the above notice appeared in said paper, "The Public," for four successive weeks, commencing on the fourteenth day of June, A. D. 1877.

(Signed) A. S. HALE.

Subscribed and sworn to before me, this the seventh day of July, A. D. 1877.

[SEAL] (Signed) J. M. DENEL,
United States Court, Southern District of New York.

JAMES GRANT, ATTORNEY AT LAW,
DAVENPORT, IOWA.
DAVENPORT, 187

July 18th, 1877.—In trust, according to the terms of the decree filed October 22d, 1875, the Farmers' Loan and Trust Company bid for the Central Railroad of Iowa and appurtenances, as described in the first mortgage, the sum of five million one hundred and ninety-two thousand three hundred and ninety dollars ($5,192,390) being the amount of the first mortgage bonds of said road with seven per cent. interest to date.

(Signed) THE FARMERS' LOAN AND TRUST COMPANY,
Trustees.
By JAMES GRANT,
Its Attorney.

EXHIBIT A.

The Central Railroad of Iowa in account with L. M. Fisher, Special Master, Dr.

		Doll.	Cts.
November, 1876.	Telegram to Public,	1	50
November, 1875.	Telegram to Des Moines Register,		75
March 5th, 1877.	Express on paper to clerk,		75
March 5th, 1877.	Express on paper to Judge Love,		25
June 6th.	Expenses to Davenport,	4	50
June 15th.	Telegram to State Register,		70
June 16th.	" " "		50
June 18th.	Expenses to Marshalltown,	5	00
Postage,			75
Advertising sale,	The Public,	80	00
" "	Marshalltown Times,	20	00
" "	Des Moines Register,	22	80
Fee for sale,		500	00
	Total amount due master,	$637	50

Endorsed 501:—In the United States Circuit Court for the District of Iowa. The Farmers' Loan and Trust Company *vs.* The Central Railroad Company of Iowa. Master's report of sale of Central Railroad of Iowa. Filed July 27th, 1877.

E. R. Mason,
Clerk.

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF IOWA.

The Farmers' Loan and Trust Company	
vs.	May Term, 1877.
The Central Railroad of Iowa et al.	

EXCEPTIONS OF N. A. COWDREY AND OTHERS, INTERVENORS, TO THE MASTER'S REPORT OF THE SALE OF MORTGAGED PREMISES.

Now comes N. A. Cowdrey, on his own behalf, and in behalf of all others allowed to intervene in this case with him, and on behalf of all the first mortgage bondholders described in the complaint and decree in this cause, who choose to come in and contribute to the expense hereof, and excepts to the report of the special master in this case, filed July 27th, 1877, relating to the sale of the mortgaged premises.

First.—For that the decree and order of this court required the sale of the premises to be advertised in a newspaper printed in the city of New York, called "The Financier;" that said master did not advertise said sale in said newspaper, and did not report his inability to find any such newspaper to the court, as he was bound to do; that the special master did not comply with the order of the court in this respect otherwise than by advertising said sale in a newspaper called "The Public," published by the Financier Association.

Second.—For that the bid made for said premises by said complainants, The Farmers' Loan and Trust Company, is and was an unauthorized bid, without authority from the

deed of trust, which was being foreclosed, or from the *cestui que trust* or from any other authorized party whatever; that no money has been paid in upon said bid or is expected to be paid by the bidder; that the *cestui que trust* cannot be compelled to go into a new speculation of running and operating a railroad without their express written amount previously obtained; that said master should have refused to receive the bid so made, and offered the property for sale or reported the facts to the court. On all of which he and they respectfully pray the judgment of this honorable court.

(Signed) N. A. COWDREY.

August 21st, 1871.

Endorsed:—No. 501. Equity. United States Circuit Court, District of Iowa. Farmers' Loan and Trust Company *vs.* Central Railroad of Iowa *et al.* Exceptions of N. A. Cowdrey and others to master's report of sale of mortgaged premises. Filed August 25th, 1877.

E. R. MASON,
Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

The Farmers' Loan and Trust Company, Trustee,

vs.

The Central Railroad Company of Iowa.

Now come Richard L. Ashhurst, chairman, Thomas B. Read, Edmond Wetmore, H. J. Boardman, Charles Alexander, A. V. Lynde, John H. B. Latrobe, George T. M.

Davis, and Peter Starr, joint committee of bondholders of the first and second mortgage bonds, and Isaac M. Cate, president, &c., who together represent the mortgage bondholders authorized to organize under the direction of the trustee. The new company to become the beneficiaries of the sale under the decree herein, and present to the court the articles of incorporation adopted by said bondholders, under the direction of the trustee, and submit the same to this court for its approval and sanction, and also move the court for an order authorizing the trustee to convey to the Central Iowa Railway Company, organized under the articles herewith submitted, the property purchased by the said decree rendered herein on the 22d of October, 1875, which purchase was made at a sale by the special master, on the 18th of July, 1877; and also move the court for an order directing the receiver to transfer and deliver all said property so purchased by the trustee and conveyed to the new company on the first day of September, 1877, and to take its receipt therefore. And also move the court for an order authorizing the payment by said new company of the debts contracted by said receiver, in certificates of indebtedness, payable in installments of six, twelve, and eighteen months, with interest at eight per cent. per annum, payable semi-annually as per coupons annexed, and that said certificates be made the first and paramount lien upon said property. And also move the court for such further and other orders as shall be necessary to place said new company in full possession and control of said property with the right to manage the same, subject only to the control of the court so far as shall be necessary to secure and enforce payment of said certificates and of the debts subject to which said company acquires said property.

(Signed) C. C. COLE,
Of Counsel, &c.

Endorsed:—Farmers' Loan and Trust Company *vs.* Central Railroad Company of Iowa. Motion to transfer property, &c. Filed August 29th, 1877.

C. C. COLE. E. R. MASON,
Clerk.

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

The Farmers' Loan and Trust Company

vs.

The Iowa Central Railroad Company and others.

Now come the plaintiffs and show to the court the report of the master on the sale of said Iowa Central Railroad and property, under the decree of this court, and the said plaintiffs move the court to confirm the said sale, and to approve the deed to the said trustee filed with the report of the master.

(Signed) GRANT & TURNER,
For the Trustee.

Endorsed:—United States Circuit Court, District Iowa. The Farmers' Loan and Trust Company *vs.* The Iowa Central Railroad Company. Motion by trustee to confirm sale. Filed August 29th, 1877.

E. R. MASON,
Clerk.

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF IOWA.

The Farmers' Loan and Trust Company	
vs.	May Term, 1877.
The Central Railroad of Iowa et al.	

EXCEPTIONS OF N. A. COWDREY AND OTHERS, INTERVENORS, TO THE SALE MADE BY THE MASTER OF THE MORTGAGED PREMISES.

Now comes N. A. Cowdrey, and on his own behalf, and in behalf of all others allowed to intervene in this case with him, and on behalf of all other first mortgage bondholders described in the complaint and decree in this cause who choose to come in and contribute to the expense hereof, and excepts to the report of the special master in this cause, filed July 27th, 1877, relating to the sale of the mortgaged premises.

First.—For that the decree and order of this court required notice of the sale of the premises to be advertised in a newspaper printed in the city of New York, called "The Financier;" that said master did not advertise said sale in said newspaper, and did not report his inability to find any such newspaper to the Supreme Court of the United States, in which court this cause is now and has been pending since February 21st, 1876, by reason of the renewal of said case from this court to said United States Supreme Court by appeal duly made and entered in said court; that the special master did not comply with the order of this court in this respect.

Second.—For that the bid made by the complainants for the purchase of said premises is and was an unauthorized bid, without authority from the deed of trust which was being foreclosed, or from the *cestui que trust*, or from any other authorized party whatever; that the complainants making said bid have paid no money or offered to pay any sum whatever with which to pay the bondholders, the *cestui que trust* named in said deed of trust.

That the *cestui que trust* cannot be compelled by their trustee to go into the new speculation of running and operating a railroad, with numerous and unknown parties, other than first mortgage bondholders, without their previous express written assent, which they have never given.

Third.—That the bid made by the complainants of $5,192,390 is not the true amount of purchase-money required. It is uncertain and indefinite because that it omits to assume or say anything about an indebtedness created by the court, or declared by the court to take priority in lien to the first mortgage bonds, which prior debts are claimed to amount to over $400,000, and for the payment of which the purchaser wholly omits to provide, thus rendering its bid indefinite and uncertain in amount.

On all of which said Cowdrey respectfully prays the judgment of this honorable court.

(Signed) N. A. COWDREY.

August 21st, 1877.

Endorsed:—No. 501. Equity. United States Circuit Court, District of Iowa. Farmers' Loan and Trust Company *vs.* Central Railroad of Iowa *et al.* Exceptions of N. A. Cowdrey and others to parties report of sale of the mortgaged premises. Filed August 29th, 1877.

E. R. MASON,
Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

The Farmers' Loan and Trust Company

vs.

The Central Railroad Company of Iowa and others.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA:

The complainant, The Farmers' Loan and Trust Company, makes this its report to the court, as follows:—

I. That immediately on being informed of the opinion of the court, delivered in this case, at the May term of the court, the complainant, in exercise of the powers conferred by the deeds of trust and by the decree of the court herein, caused the property covered by the deeds of trust of the Central Railroad Company of Iowa to be duly advertised, as in the said decree and in a subsequent order of the court, bearing date the eighth day of January, 1877, provided, and to be sold by Lewis M. Fisher, Esquire, the master in the decree named, according to law and the practice of this court.

II. That the said sale was duly made at the front door of the county court-house, in the city of Marshalltown, Iowa, on the eighteenth day of July, 1877, and that the complainant, in pursuance of the terms and directions in the said decree contained, became the purchaser, bidding the principal and interest of the first mortgage bonds, to wit, the sum of five million one hundred and ninety-two

thousand three hundred and ninety dollars ($5,192,390), as will appear by reference to the said master's report of sale, now on file, with a deed of conveyance by the said master to the complainant.

III. There have been presented to the complainant, and we herewith submit to the court, articles of association of "The Central Iowa Railway Company," by Richard L. Ashhurst and others, claiming to represent $2,425,500 of first mortgage bonds.

IV. There have also been presented to the complainant, and we herewith submit to the court, articles of association of "The Iowa Central Railway Company," by Russell Sage and others, claiming to be first mortgage bondholders and *cestui que trust* of the complainant.

V. There have also been presented to the complainant, and we herewith submit to the court, articles of association of "The St. Louis, Iowa and Minnesota Railroad Company," by J. H. Cusack and others, claiming to represent bondholders to the amount of $700,000 first mortgage bonds.

VI. In consequence of the presentation to the complainant of the above-mentioned articles of association, the complainant has not prepared itself any articles of association, being willing and ready to adopt any one of them, as the court may direct, and it therefore now submits to the court whether it shall convey the mortgaged premises to any one of the above-named corporations, and if so, to which one of them, or shall proceed to organize a new company according to the terms of the trust deeds, on being properly requested by a majority of the first mortgage bondholders. The complainant has no evidence that the persons presenting any one of these articles represent a majority of the

first mortgage bondholders, and only one of them claims to do so.

VII. In consequence of the increased and unusual duties which have been imposed upon the trustee, the complainant, and its counsel in this cause, the complainant asks to be allowed the sum of thirty thousand dollars ($30,000) in addition to court costs, for its reasonable expenses, commissions, and counsel fees; and the complainant prays that the court will make such order or decree in the premises as may be just.

Dated August 29th, 1877.

(Signed) TURNER & GRANT,
For Complainant.

Endorsed:—United States Circuit Court, District of Iowa. The Farmers' Loan and Trust Company *vs.* The Central Railroad Company of Iowa. Reports of complainant. Filed August 29th, 1877.

TURNER & GRANT,
For Complainant.
E. R. MASON,
Clerk.

CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF IOWA.

Farmers' Loan and Trust Company

vs.

Central Railroad of Iowa et al.

TO THE HONORABLE COURT:

The undersigned, protesting against the premises being disposed of at this time in the manner and form asked for

by certain persons styling themselves a New York and Boston Committee, claiming to be organized into a corporation called the Central Railway Company of Iowa, and reserving to himself the right to except to and appeal from any action of the court in the premises deemed prejudicial to his interest, hereby respectfully requests that you will take into consideration the articles of incorporation of the Iowa Central Railway Company, a corporation to be formed by the first mortgage bondholders, beneficiaries under said decree. That said articles of incorporation are submitted to the court by the complainant at the request of the undersigned. In the event of the court approving of said articles and ordering the premises to be conveyed to the said company by said Farmers' Loan and Trust Company, the undersigned will advance the money and pay all the cost, expense, and allowances taxed or allowed by the court, and such of the receiver's debts now amounting to about $400,000, as the court think ought at once to be paid, the undersigned subrogating himself into the place of the present holders of said claims.

The undersigned will pledge the said Iowa Central Railway Company to administer the road and to apply its net earnings in the manner directed by the court in its proper order to be entered in this respect—that is to say, that he will see that the net income of the road is applied to the payment of the receiver's debts and the above-named expenses and allowances until the same are all paid, before any money is paid to the bond or stock holders of said railway company.

Very respectfully, your obedient servant,

(Signed) N. A. COWDREY,

For self and other first mortgage bondholders.

Endorsed:—Farmers' Loan and Trust Company *vs.* Central Railroad of Iowa. Application of N. A. Cowdrey

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to have road conveyed to the Iowa Central Railway Company, and offer to advance money to pay court expenses. Filed August 29th, 1877.

E. R. MASON,
Clerk.

CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF IOWA.

Farmers' Loan and Trust Company, Trustee,

vs.

The Central Railroad of Iowa.

May Term, 1877.

APPLICATION OF RUSSELL SAGE AND OTHERS FOR AN APPEAL, MADE IN OPEN COURT AUGUST 31ST, 1877.

Now comes Russell Sage, James Buell, and N. A. Cowdrey, by liberty of the court intervenors in the above-entitled cause, and represent to this court that they, the intervenors, have requested the complainants to take the appeal herein below asked for, which request the complainants refused.

Whereupon the said intervenors, in their own behalf as *cestuis que trust* of the complainants, and in behalf of all others similarly situated who choose to come in and contribute to the expense hereof, now in open court apply for an appeal from certain orders and decrees herein below named to the next term of the Supreme Court of the United States, to be held at the city of Washington on the second Monday of October, 1877, viz. :—

From the decree or order made October 21st, 1875, in this cause, directing the payment of $125,736 to John S.

Newberry, James McWilliams, and Warren Currier, and declaring the same to be a lien upon the railroad and premises described in the complaint prior to the lien of the mortgage and bonds secured thereby, to foreclose which this suit is brought.

From the decree or order of this court made October 21st, 1875, directing the receiver to pay Horace Abbott, Thomas Kensett, John S. Gilman, and Isaac M. Cate the sum of $44,769.78 before the payment of any money to said bondholders.

From the decree or order of this court made October 21st, 1875, directing the receiver to pay the Mowery Car Company the sum of $47,031.74 before the payment of any money to said bondholders.

From the decree or order of this court made October 21st, 1875, directing the receiver to pay to the Haskell & Barker Car Company the sum of $6571.18 before the payment of any money to said bondholders.

And from the order and decree of this court made August 31st, 1877, confirming the sale of the mortgaged premises made as claimed in pursuance of an order made October 22d, 1875, and ordering a distribution of the proceeds of said sale.

And from each and every other order of the court made in this cause August 31st, 1877.

The intervenors herewith tender to the court a good and sufficient bond on said appeal, and pray that the same may be allowed and approved as a *supersedeas* bond on the orders and decrees made August 31st, 1877.

And we will in duty bound ever pray.

RUSSELL SAGE,
JAMES BUELL,
N. A. COWDREY.

(Signed) By N. A. COWDREY,
Solicitor.

Appeal allowed. *Supersedeas* refused. Bond of $1000. 10 per cent. to be filed within thirty days. Bond to be approved by judge of this court. Bond to be made to the clerk of this court in trust for whom it may concern.

Endorsed :—United States Circuit Court, District of Iowa. Farmers' Loan and Trust Company, Trustee, *vs.* Central Railroad of Iowa *et al.* Second appeal of Russell Sage and others. Filed August 31st, 1877.

E. R. MASON,
Clerk.

CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF IOWA.

Farmers' Loan and Trust Company, Trustees, Complainants,

vs.

Central Railroad of Iowa et al.

REQUEST OF BONDHOLDERS TO THE COMPLAINANT THAT COMPLAINANT WOULD TAKE AN APPEAL.

To the Complainants:

GENTLEMEN:—The undersigned, your *cestuis que trust* in the above-entitled case, hereby respectfully request you to take an appeal to the Supreme Court of the United States from all order and decrees made in this case, giving a preference in lien or in payments to debts due from the defendant to the mortgage debt of which you are the trustee, amounting, as we are informed and believe, to about the sum of $350,000.

Also that you will take an appeal from and order, confirming the sale of the mortgaged premises and a distribution of the proceeds, made August 31st, 1877.

We will give you sufficient indemnity to secure you against all loss or damage by reason of your taking said appeal.

Respectfully, your obedient servants,

RUSSELL SAGE,	JAMES BUELL,
EDWIN PARSONS,	T. P. JAMES,
FREDERICK G. SERLE,	N. A. COWDREY.

(Signed) By their Attorney, N. A. COWDREY.

August 31st, 1877.

Service of the within request is hereby admitted, and the complainants decline to take the appeals requested.

(Signed) TURNER & GRANT,
August 31st, 1877. *For Complainants.*

Endorsed:—501. Eq. Farmers' Loan and Trust Company *vs.* Central Railroad of Iowa. Request of bondholders, to complt., to appeal from orders or decrees 21st October, 1875, and 31st August, 1877. Filed August 31st, 1877.

E. R. MASON,
Clerk.

N. A. COWDREY,
For Bondholders.

Farmers' Loan and Trust Company

vs.

Central Railroad of Iowa.

Adjourned Term,

August 31st, 1877.

DILLON, CIRCUIT JUDGE.—We have considered the exceptions of Mr. Cowdrey and others to the master's report of sale, and are of opinion that they must be disallowed.

The plaintiff, notwithstanding the pending appeal, has a right to execute the decree, the *supersedeas* having been vacated.

It was incidental to this right, which remains in this court, to make the order substituting the "Public" in the place of the "Financier," more especially as the evidence produced before me when the order was made showed the two papers to be the same, the change being one of name only. At all events, the object of the notice was publicity, and the requirements of the decree in this respect have been substantially complied with. Whether a majority of the present holders of bonds have assented or shall assent in writing to the articles of incorporation when that fact is reported to us, we will direct the trustee to convey the premises to it.

It is for the bondholders and not the court to determine what corporation or company is or shall be entitled to the property.

The other exceptions are based upon supposed errors in the decree. But while that decree remains unreversed, it must be accepted and treated by this court as correct. The master in making the sale has followed the decree. The exceptions to his report are overruled, and the motion to confirm the sale is granted, and the master is directed

to execute a deed to the trustee pursuant to the terms of the decree.

LOVE, J., concurs.

SAME CASE.

DILLON, CIRCUIT JUDGE.—The several motions to order the property to be conveyed by the trustee to one or other of three new companies must be denied for the reason that under the decree and the deed of trust no evidence is before us "that the holders of a majority of the outstanding bonds secured by the first mortgage have *in writing* requested or directed" or assented to the articles of incorporation of either of said new companies. This written request or assent on the part of the present holders of said bonds to the articles of incorporation is expressly required by the deed of trust, and it is not changed by the decree. The decree and the deed of trust must be construed together. This written request or assent must be produced either to the trustee or to this court or the master before either the trustee or the court is authorized to convey the premises to the new corporation. Such is the express requirement of the deed of trust. If the parties desire, we will appoint the master to act in this matter in the place of the trustee, and direct him to proceed without delay to ascertain. We see no substantial objection to the scheme proposed in the order submitted to us for providing for the receiver's debts, but as this is dependent upon a conveyance to the new company, no absolute order in this respect can be entered at this time. We mention this now, so that the creditors and bondholders may be apprised of our views.

LOVE, J., concurs.

UNITED STATES CIRCUIT COURT, DISTRICT OF IOWA, MAY TERM, 1877.

Friday, August 31st, 1877.

The Farmers' Loan and Trust Company, Trust, &c.,

vs.

The Central Railroad Company of Iowa.

No. 501. Eq.

And now on this thirty-first day of August, 1877, it being of the May term (adjourned), this cause came on for hearing upon motion of the complainant to confirm the report of the sale made by the master and for conveyance pursuant thereto, and upon the exceptions of N. A. Cowdrey and others to said report, and also upon the motion of R. L. Ashhurst and others for an order for the transfer of said property to a new company organized pursuant to the decree, and the compromise whereon the same was based, called the Central Iowa Railway Company, and also for an order authorizing said new company to pay the debts of the receiver and other prior lien debts by certificates of indebtedness payable in installments of six, twelve, and eighteen months, with eight per cent. per annum interest, payable semi-annually. And the court having fully heard counsel and parties in respect to all said motions, and being fully and sufficiently advised in the premises, does now and here order, adjudge, and decree that the exceptions filed by N. A. Cowdrey, for himself and others, to the report of the master of the sale of the property, &c., be and the same are hereby overruled, and the court finding as a matter of fact that said sale has been made in strict accordance with the decree, the same is hereby fully confirmed and approved.

It is further ordered, adjudged, and decreed that the special master, L. M. Fisher, do execute to the Farmers' Loan and Trust Company, trustee, a conveyance of the said property so sold by him, and the conveyance executed by said master being presented in open court is approved and ordered to be delivered to the said trustee and to be recorded.

In respect to the motion ordering the trustee to convey said property to the new company organized by the first mortgage bondholders, and to transfer the possession of said property to such new company, the court now here decrees, adjudges, and orders as follows, to wit:—That since it is provided by the first mortgage that the new company to which the property shall be transferred after being purchased by the trustee "shall be organized upon such terms, conditions, and limitations, and in such manner as the holders of the majority of said outstanding bonds secured by this mortgage shall *in writing* request or direct," and which said provision is substantially embraced in and required by the fourth paragraph of the decree rendered herein on October 22d, 1875, and since it is not made now and here properly to appear to the court that the articles of incorporation presented have had such approval in writing, L. M. Fisher, Esq., is hereby appointed special commissioner for the purpose of taking the requests in writing of the first mortgage bondholders and their approval or disapproval of the terms, conditions, and limitations prescribed by the new company to which they shall desire said property to be conveyed, and for that purpose the commissioner may visit the following places:—Bangor, Lewiston, and Portland, in the State of Maine; Boston and Northampton, in the State of Massachusetts; Concord, in the State of New Hampshire; Troy, Schenectady, Utica, Little Falls, Binghamton, Genesee, Poughkeepsie, Cazenovia, and the city of New York, all in the State of New York; Philadelphia, in

the State of Pennsylvania, and the city of Baltimore, in the State of Maryland; and that the master shall insert a brief notice in some paper published in each of such places of the time and place at which he will take proofs of ownership and approval by the holders of said bonds, and will also notify said bondholders by mail of such time and place, so far as he shall find the same practicable. The commissioner will submit to the several bondholders appearing before him the several plans or articles of incorporation for the proposed new company, which shall be furnished him by any of the bondholders for such purpose, and shall take the written approval of each bondholder upon the plan or organization he shall prefer, and his request for the transfer of the property to such company. The commissioner will not take the vote, approval, or request of any one claiming to be a bondholder, until such person shall first produce to him, for his personal inspection, the bond held by the party claiming to make his vote, approval, or request, or the receipt of the Farmers' Loan and Trust Company for such bond, and the commissioner will cause to be endorsed upon the written or printed approval of each bondholder, the number and amount of the bond or bonds he holds. And in order that each owner or holder of bonds may produce the same in person, instead of the receipt therefor, if he shall so prefer, the trustee, The Farmers' Loan and Trust Company, the complainant herein, is directed to return to the owners any of such bonds which may be in their possession, or may have been deposited with them for safe-keeping, or otherwise, upon the written request of such owner or his assigns, and the surrender of the trustee's receipt therefor.

And the commissioner will proceed in the discharge of this duty at the earliest convenient day, and make his report in writing as soon as he shall find the same practicable. And upon the coming in of said report by the

commissioner, the court will order the trustee to convey the property to the company, approved by the majority of the first mortgage bondholders, and will order the immediate transfer and delivery of such property to such new company. In respect to the motion allowing the payment of the debts of the Central Railroad Company of Iowa, contracted by the receiver, or incurred during the pendency of his action, in certificates of indebtedness, in installments of six, twelve, and eighteen months, with interest at eight per cent. per annum, which certificates shall be received by being made the first and paramount lien upon the property, the court finds that it is not necessary to enter such order at this time; but the court does find that the necessity for some provision of that kind exists, and upon examination the plan proposed by the order submitted seems to the court to be unobjectionable, and unless some special cause shall be shown against said order, the same or some other suitable provision will be made of record concurrently with the order for conveyance by the trustee to the new company, and the transfer and delivery of the possession of the property, books, assets, &c., to said new company.

(Signed) JOHN F. DILLON,
(Signed) J. M. LOVE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

I, Ed. R. Mason, clerk of the said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copies of the order as to publication in "The Public." Master's report of sale. Exceptions of N. A. Cowdrey *et al.* to Master's report of

sale. Motion to transfer property. Motion by trustee to confirm sale. Second exceptions of N. A. Cowdrey *et al.* Master's report of sale. Report of trustee. Application of N. A. Cowdrey to have road conveyed to Iowa Central Railway Company. Second appeal of Russell Sage *et al.* Request of bondholders for trustee to appeal. Opinion. Decree in a certain cause in said court, wherein the Farmers' Loan and Trust Company is plaintiff and the Central Railroad of Iowa *et al.* are defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name, and affix the seal of said court at my office in Des Moines, in said district, this third day of October, A. D. 1877.

E. R. MASON,

[SEAL] *Clerk U. S. C. C., District of Iowa.*

U. S. Circuit Court, District of Iowa.

OCTOBER TERM, 1877.

FRIDAY, *Aug.* 31, 1877.

FARMERS' LOAN AND TRUST COMPANY, TRUSTEE,
vs.
THE CENTRAL RAILROAD OF IOWA. } No. 501 Eq.

This cause coming on this day for hearing on the application of Russell Sage and others for an appeal from the decree this day entered herein, and from other orders of this court in this cause, and the court being advised in the premises, it is ordered, adjudged, and decreed that the appeal prayed be allowed, and that the appeal bond be fixed at the sum of one thousand dollars, to be approved by one of the judges of this court. It is further ordered that the application for supersedeas bond be, and the same is hereby, denied.

A true copy.

(Signed) Attest: E. R. MASON, *Clerk.*

* * * * * *

Afterwards, to wit, on the 11th day of October, 1877, Russell Sage et al. filed in said clerk's office in said cause an appeal bond, which said appeal bond is in the words and figures following, to wit:

Circuit Court of the United States, District of Iowa.

THE FARMERS' LOAN AND TRUST COMPANY, Complainant, Russell Sage, James Buell, and N. A. Cowdrey, Intervenors, Complainants,
vs.
THE CENTRAL RAILROAD COMPANY OF IOWA and others, Defendants. } In Equity. No. 501. May Term, 1877.

Bond on Appeal.

Know all men by these presents, that we, Russell Sage and N. A. Cowdrey, are held and firmly bound unto the clerk of the Circuit Court of the United States for the District of Iowa, in trust for the parties to the above-named suit, as their interest may appear, in the sum of one thousand dollars, lawful money of the United States, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally.

The condition of this bond is such that, whereas, at a term of the Circuit Court of the United States for the District of Iowa, held on the 2d Monday of May, 1877, viz., August 31st 1877, in the suit above named, depending in said court, by which the intervenors in said case were injured and aggrieved as more fully set forth in their petition asking for an appeal from said orders and decrees. And the said intervenors, being in open court, asked for and obtained an appeal from said orders and decrees to the Supreme Court of the United States, and filed a copy thereof in the office of the clerk of said Circuit Court for the District of Iowa.

Now, therefore, if said intervenors, or either of them, shall prosecute said appeal to effect, and answer all damages and costs if said appeal is not made good, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands and seals, at the city of New York, this 24th day of September, 1877.

(Sgd.) RUSSELL SAGE, [L. S.]
(") N. A. COWDREY. [L. S.]

Approved by me, and the clerk is directed to file the same in the above-entitled cause.

(Sgd.) J. M. LOVE, *Judge.*

Filed Oct. 11, 1877.

E. R. MASON, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

Russell Sage, James Buell, and N. A. Cowdrey, Intervenors, Appellants,

vs.

The Central Railroad Company of Iowa et al.

October Term, 1877.

No. 937.

(EXTRACT FROM RECORD.)

* * * * * * * * * *

PETITION OF RUSSELL SAGE, JAMES BUELL, AND N. A. COWDREY, INTERVENORS, FOR APPROVAL OF BOND ON APPEAL TO OPERATE AS A SUPERSEDEAS BOND.

To the Honorable Ward Hunt, Associate Justice of the Supreme Court of the United States:

The petition of Russell Sage, James Buell, and N. A. Cowdrey, all citizens of the city of New York, respectfully shows:—

That the Circuit Court of the United States for the

District of Iowa has made an order or decree in the above-entitled case, at its May term, 1877, viz., August 31st, 1877, confirming the sale of the railroad of the defendants and ordering a distribution of the proceeds of the sale.

That your petitioners were injured and aggrieved by said orders and decrees, and in open court took an appeal to the Supreme Court of the United States, which appeal was there and then allowed by the court, but no *supersedeas* bond was given or approved.

Your petitioners now desire to have the execution of said orders and decrees stayed until the Supreme Court has determined said appeal.

And here tender to your honor a good and sufficient bond in the penal sum of $20,000, which they pray your honor to approve, and allow the same to operate as a *supersedeas* bond in the above-entitled cause.

Your petitioners further show that the action is one to foreclose a railroad mortgage, which mortgage covers the entire property of the defendant, the Central Railroad Company of Iowa; that said railroad company is a bankrupt company, and wholly unable to pay its debts; that said United States Circuit Court has heretofore appointed its receiver, who is now and since 1874 has been in possession of the entire property of the said defendant, and is operating said railroad under and in pursuance of the orders of said Circuit Court; that no party to the suit can suffer damages by reason of said appeal and *supersedeas*, because the court is in possession of the premises and will protect all parties in interest.

That said court made an order or decree of foreclosure in said entitled suit, on the twenty-second day of October, 1875, and also a similar order on the fourteenth day of January, 1876, from which orders or decrees your petitioners took an appeal to the October term, 1876, of the Supreme Court of the United States, which appeal is now

pending in said court, and will be duly heard when reached on its calendar or docket.

That said Supreme Court at its last term retained the appeal, but held that the bond was not given in time to act as a *supersedeas* bond, wherefore, your petitioners now have appealed from the decree confirming the sale of said road, pursuant to the decree of foreclosure, and respectfully petition your honor to allow a stay of the execution of the decree confirming said sale.

And your petitioners, as in duty bound, will ever pray, &c.

(Signed) RUSSELL SAGE,
JAMES BUELL,
N. A. COWDREY.

NEW YORK, September 15th, 1877.

CITY AND STATE OF NEW YORK, *ss.*

September, 1877.

Personally appeared before the undersigned authority, Russell Sage, James Buell, and N. A. Cowdrey, and each for himself made oath that the foregoing petition is true.

W. J. MOONEY,
[SEAL] *Notary Public, New York County.*

Endorsed:—Supreme Court of the United States. Farmers' Loan and Trust Company *et al. vs.* Central Railroad of Iowa *et al.* Petition to Associate Justice Hunt for *supersedeas* bond. Filed September 22d, 1877.

E. R. MASON,
Clerk.

On the same day, to wit, September 22d, 1877, Russell Sage *et al.* filed in said clerk's office in said cause

supersedeas bond, which said *supersedeas* bond is in the words and figures following, to wit:—

CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF IOWA.

The Farmers' Loan and Trust Company, Complainants, and Russell Sage, James Buell, and N. A. Cowdrey, Intervenors, Complainants,	In Equity.
vs.	No. 501.
The Central Railroad Company of Iowa and others, Defendants.	May Term, 1877.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, That we, Russell Sage, James Buell, and N. A. Cowdrey, are held and firmly bound unto the clerk of the Circuit Court of the United States for the District of Iowa, in trust for the parties to the above-named suit, as their interest may appear, in the sum of $20,000, lawful money of the United States, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally.

The condition of this bond is such that, whereas, at a term of the Circuit Court of the United States, for the District of Iowa, held on the second Monday of May, 1877, viz., August 31st, 1877, in the suit above named depending in said court, in equity, a certain order or decree was made by said court, by which the intervenors in said case were injured and aggrieved as more fully set forth in their petition asking for an appeal from said orders and decrees.

And the said intervenors, having in open court asked for and obtained an appeal from said orders and decrees to the Supreme Court of the United States, and filed a copy thereof in the office of the clerk of said Circuit Court for the District of Iowa. Now, therefore, if said intervenors, or either of them, shall prosecute said appeal to effect, and answer all damages and costs if said appeal is not made good, then this obligation is void, otherwise to remain in full force and virtue.

Witness our hands and seals, at the city of New York, this fifteenth day of September, 1877.

(Signed)	RUSSELL SAGE,	[SEAL]
(Signed)	JAMES BUELL,	[SEAL]
(Signed)	N. A. COWDREY.	[SEAL]

Approved by me to operate as a *supersedeas*, when the same is filed in the office of the clerk of the Circuit Court of the United States at Des Moines, Iowa.

(Signed) WARD HUNT,
Associate Justice Supreme Court of the United States.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.*

SEPTEMBER 15th, 1877.

Personally appeared Russell Sage, James Buell, and N. A. Cowdrey, the signers of the foregoing obligation, and each for himself made oath that he was worth over the sum of $40,000 after the payment of all debts, and that they each of them had over $20,000 worth of unincumbered property in the State of Iowa.

Attest:
[SEAL]

(Signed) J. W. MOONEY,
Notary Public New York County.

Endorsed :—Circuit Court of the United States, District of Iowa. Farmers' Loan and Trust Company *vs.* Central Railroad of Iowa *et al.* Bond on appeal from order confirming sale of railroad. Filed September 22d, 1877.

E. R. MASON,
Clerk.

(COPY.)

SUPREME COURT OF THE UNITED STATES.

Russell Sage et al.
vs.
Central Railroad of Iowa et al.

October Term, 1877.
No. 937.

ASSIGNMENT OF ERRORS BY APPELLANT.

First.—We assign for error the same as were assigned in a former appeal between the same parties at the October Term, 1876, of this court, viz.:—

ASSIGNMENT OF ERRORS October Term, 1876.

1st. The Circuit Court attempted to force different and inconsistent duties and trust upon the trustee from what the parties in interest had themselves, by the trustee deed, established.

2d. The fourth paragraph, or head of the decree, is erroneous, and should be reversed, except so much of it as appoints a master to make the sale, and gives instruction to the master what and how to do.

3d. The fifth paragraph, or head of the decree, is erroneous, and should be modified, as shown in the accompanying form of proposed decree.

4th. The sixth paragraph, or head of the decree, is erroneous, in so far as it discriminates in the terms of purchase in favor of the complainant. The sale should be an open one to all persons upon the same terms.

5th. The seventh and eighth paragraphs are erroneous, and should be omitted.

6th. The ninth paragraph is erroneous, and should be so modified as to state the exact amounts due upon the class of claims there named, so that any proposed purchaser would know the amount, or the approximate amount of such claims as he would have to pay or assume.

Second.—The Circuit Court erred in overruling the exceptions filed by the appellants in said court.

Third.—The Circuit Court erred in directing and disclosing *all* the debts contracted by the receiver to be "a first and permanent lien upon all said property and all additions thereto to all other liens, &c.," in this, that said declaration in effect made certain contract debts of the defendant company prior in lien to the first mortgage bonds of the appellants and others, viz.:—

Debts on contract said to be due to John S. Newbury & Co.,	$125,736 00
Isaac M. Cate and others,	44,769 78
Mowery Car Company,	47,031 74
Harkel & Barker Car Company,	6,571 18
	$224,108 70

And declaring that said Circuit Court would enforce the same without other action thereon, &c.

109

Fourth.—The Circuit Court erred in ordering and decreeing certain undefined alleged debts said to be provided for in paragraph eight of the decree of sale, to be lien upon the premises, and prohibiting the beneficiaries of the purchase from having or enjoying any benefits of the property, until said indefinite and undetermined debts are satisfied and discharged.

Fifth.—The appellants will avail themselves of each and all other errors manifest upon the record in each appeal.

N. A. COWDREY,
Solicitor for Appellants.

IN THE

Supreme Court of the United States.

No. 937.

FARMERS' LOAN AND TRUST COMPANY, COMPLAINANTS, RUSSELL SAGE, JAMES BUELL AND N. A. COWDREY, INTERVENORS, COMPLAINANTS,

vs.

THE CENTRAL RAILROAD COMPANY OF IOWA.

APPEAL FROM THE CIRCUIT COURT FOR THE DISTRICT OF IOWA.

Motion to Dismiss Appeal and Vacate Supersedeas.

Allen, Lane & Scott, Printers, 233 South Fifth Street, Phila.

In the Supreme Court of the United States.

Farmers' Loan and Trust Company, Complainants, Russell Sage, James Buell and N. A. Cowdrey, Intervenors, Complainants,

vs.

The Central Railroad Company of Iowa.

No. 937.

APPEAL FROM THE CIRCUIT COURT FOR THE DISTRICT OF IOWA.

And now, to wit, November 26th, 1877, come, by their counsel, the said Farmers' Loan and Trust Company, and the said The Central Railroad Company of Iowa, the defendants below, and move this Honorable Court to vacate and set aside the order made on the 22d, day of September, 1877, by the Hon. Ward Hunt, one of the Justices of this Court, upon the petition of the said Russell Sage, James Buell and N. A. Cowdrey, intervenors, appellants, for a *supersedeas* directing the stay of all proceedings under the said order or decree rendered

the 31st August, 1877, and for specification of the grounds of this their motion, they show to the Court here:—

I. That it appears by the record in this cause that application was made to the Hon. John F. Dillon, the Circuit Judge of the said Circuit for the District of Iowa, by whom the appeal was allowed for a *supersedeas*, and said application was by him refused, and if such refusal was improper or unlawful the only remedy of the appellants was by mandamus from this Court to compel him to allow such *supersedeas*.

II. Because the Hon. Ward Hunt, Justice of this Court, who granted said *supersedeas*, had no jurisdiction in the premises, he not being the Judge who allowed the appeal, and who had sole jurisdiction in the matter.

III. Because none of the matters contained in the order or decree of August 31, 1877, were the subject of appeal or *supersedeas*, and as to the matters appealed from in the orders of October 21, 1875, more than sixty days had elapsed between the entry of said orders and the application for said appeal.

IV. Because a *supersedeas* has already been refused in an appeal involving the same questions, and this is an attempt to obtain a stay of the operation of decree of October 22, 1875, under pretence of appealing from and superseding the order which merely executes the decree.

V. Because in the petition to the Hon. Ward Hunt to grant the *supersedeas* they stated that the appeal was taken from the decree of August 31, 1877 and did not state that it was also from the prior orders or decrees made October 21, 1875 and obtained the order for the *supersedeas* by a

suppression of matters which were most pertinent to the application before him. They did not state that the *supersedeas* had been applied for and refused by Hon. John F. Dillon at the time he made the order allowing the appeal. On the contrary they stated that the "appeal was then and there allowed by the Court, but no *supersedeas* bond was given or approved," thus giving Mr. Justice Hunt to understand that the appeal was allowed from but one decree which had been made only eighteen days previously and that the question of the allowance of the *supersedeas* had never been acted upon by the Hon. Judge who had granted the appeal, thus plainly misleading Mr. Justice Hunt in both these particulars.

VI. Because while the petition for the *supersedeas* and the bond which was approved and ordered to operate as a *supersedeas* only recited the decree of August 31, 1877, and thus gave Mr. Justice Hunt to understand that the appeal only applied to that order yet in fact the order was so drawn as to make the *supersedeas* as broad as the appeal and apply alike to the orders of October 21, 1875, and the decree of August 31, 1877.

VII. Because said *supersedeas* is in other respects irregular and defective.

H. B. TURNER,
B. F. LEE,
For Farmers' Loan and Trust Company.

R. L. ASHHURST,
J. C. BULLITT,
For Railroad Company and Bondholders.

In the Supreme Court of the United States.

Farmers' Loan and Trust Company, Complainants, Russell Sage, James Buell and N. A. Cowdrey, Intervenors, Complainants,

vs.

The Central Railroad Company of Iowa.

No. 937.

APPEAL FROM THE CIRCUIT COURT FOR THE DISTRICT OF IOWA.

BRIEF OF ARGUMENT FOR MOTION TO VACATE *SUPERSEDEAS.*

This is a motion to vacate an order of *supersedeas* granted by Judge Hunt on the 22d day of September, 1877, whereby on an appeal by Russell Sage, James Buell and N. A. Cowdrey, the execution of an order or decree made by the Circuit Court for the District of Iowa on the 31st day of August, 1877 was stayed.

In a motion submitted contemporaneously with the present for the dismissal of the appeal on which this *supersedeas* is granted, we have shown that this order is entirely of an interlocutory character, and in no respect such a final decree as an appeal lies from. Should the motion to dismiss the appeal prevail, it will of course carry with it the *supersedeas*, and render it unnecessary for us to argue this motion. But nevertheless, in order to save the time of the Court, it seems desirable that we should present at the same time our argument on this point in case the Court should not agree with our view as to the dismissal of the appeal.

It will be remembered by the Court that this case has been before them previously, on an appeal taken by the same appellants from the decree entered October 22, 1875, in which case this Court vacated the *supersedeas*, while holding the appeal, and delivered an opinion, 3 Otto, 412, showing that the appellants were not entitled by reason of their delay to suspend the execution of the decree. By their present attempt, the appellants are seeking to set aside and destroy the effect of the decision of this Court at the late term by appealing from the same decree that their pending appeal relates to.

An inspection of the two decrees appealed from, viz., that of October 22, 1875, and the order of confirmation of sale, etc. of August 31, 1877, clearly shows that this is the case. There is nothing in the order of August 31, 1877, except what is merely the carrying out and execution of what was decreed October 22, 1875, and what has been already appealed from. This certainly presents a strong ground to the Court not to allow, if it can lawfully be prevented, the appellants to gain by indirection the advantage of a stay which they were not entitled to by reason of their original delay; and this appeal to the equitable judgment of the Court was no doubt strongly felt by Judge Dillon, when, as will be shown by the record annexed, while he allowed

the appellants to appeal, he refused to let this appeal be a *supersedeas*.

As will be seen by reference to the application for an appeal, it is a series of appeals from certain orders made by the Court October 21, 1875 and an appeal from the order made August 31, 1877 confirming the sale of the mortgaged premises.

As to the orders made October 21, 1875 a period of upwards of twenty-two months had then elapsed, and although the appellants were not too late for an appeal, two years not having elapsed, yet it was perfectly clear they could not be entitled to a *supersedeas*, since more than sixty days had elapsed, and the decision of this Court made in the same case, as well as the decision in Kitchen *vs.* Randolph reported 3 Otto, 86, clearly show that the appeal being taken in sixty days is an absolute prerequisite to a *supersedeas*. The remainder of the matter sought to be appealed from in said application, viz., the confirmation of the sale, was clearly not the subject of appeal at all, and as well as all the other matters contained in said orders of August 31, 1877 were matters merely interlocutory, or in the discretion of the Court. The true reading, therefore, of the order, the subject of this appeal, made by Judge Dillon, would probably be that he intended to allow the appeal only as to the orders made October 21, 1875, and as to those refused a *supersedeas*. Should, however Judge Dillon have intended to allow an appeal as prayed from the order of August 31, 1877, and been aright in allowing such appeal, his judgment in refusing *supersedeas* was not the subject of review or alteration by the learned Justice for the Second Circuit.

As has been repeatedly held, questions of *supersedeas* and bond are considered entirely within the power of the Court or Judge allowing the appeal. In Black *vs.* Zacharie, 3 Howard, 483; Jerome *vs.* Macarter, 21 Wallace, 7, the Court

treated the discretion of the Judge who allows the appeal as final on such matters, and refused, even when sitting *in banc*, to modify the amount of *supersedeas* bonds fixed by the Judge allowing the appeal. If the Judge allowing the appeal committed an error in refusing a *supersedeas* altogether, the remedy, and the only remedy, was by mandamus of this Court, ordering him to grant a *supersedeas*.

In French *vs.* Shoemaker, 12 Wallace, 86, it was said that acts void in themselves may be done by the Circuit Court outside of the jurisdiction of the Circuit Court, which this Court cannot re-examine. The authority does not exist in this Court to issue *supersedeas* except in cases where it is necessary for the exercise of its appellate jurisdiction. In Railroad *vs.* Wisewell, 23 Wallace, 507, it was held that for refusal of Circuit Court to hear and decide a case, the proper remedy was in a mandamus to compel action, and not by writ of error. This therefore, would be clearly the remedy if the Circuit Court erred in refusing a *supersedeas*.

The application for an allowance of appeal might originally have been made, it is true, to a Judge of the Court below, or to a Justice of this Court, and in that case, the Judge or Justice allowing the appeal would have, under Sections 999 and 1000, the right to fix the amount of the security for the *supersedeas*. The provisions express that the Justice or Judge signing the citation is to take the security. The provision in Section 1007 gives no authority to any other Judge or Justice than the one allowing the appeal, to take the security. The provision as to the powers of the Justice of the appellate Court is only that where the writ of error or citation has been duly served within sixty days, the time for giving the security required by law;—that is already fixed by the Judge allowing the appeal—may be prolonged beyond 60 days.

All the matters comprised in the present appeal except

† Telegraph to us Cyc
19 Lawl 427-8-431

the orders of October 21, 1875, which have been fully treated of above, and the unimportant order as to the publication of the advertisement are directly the same as the matters included in the appeal heretofore taken, and now pending, from the decree of October 22, 1875, of which the order of August 31, 1877 is nothing but the execution. Nothing could be clearer than that a party cannot have two appeals at the same time on the same subject-matter. Wheeler *vs.* Harris, 13 Wallace, 51. But having failed by reason of their own *laches* in obtaining *supersedeas* on the first appeal, a *supersedeas* is now sought to be obtained under the guise of taking an appeal from what is but the execution of the original judgment. *Supersedeas*, in order to stay proceedings on execution, must come before there is levy under execution.

Boyle *vs.* Zacharie, 6 Peters, 297.

It may be further remarked that the present appellants were not parties to the record, and therefore have no right to appeal, except so far as it was allowed them as a matter of grace. The Court below, the only authority that could extend them this favor, while it allowed them to appeal, refused to make their appeal a *supersedeas*. Their case, therefore, does not stand as if they were parties having an absolute right to appeal, and obtaining an appeal at all only as a matter of grace, they must be satisfied to take it in such manner as it was given by the Circuit Court.

Exp. Cutting, 4 Otto, 14. "No appeal lies from order of Court refusing petitioners leave to intervene and become parties that was only a motion in the cause and not an independent suit appealable here."

21 terest in said lands, or that the said Spencer or the said Lathrop were each to pay a like proportion of said purchase-money and have a like interest in the lands purchased, or that the said Fells were jointly to pay one-quarter of said purchase-money and to have an equal undivided one-quarter interest in the lands purchased; but, on the contrary, this defendant says that the lands in said bill mentioned, purchased from the United States and entered by this defendant and the said Spencer, Lathrop, and Fells, were respectively selected by the person in whose name they were entered, and were paid for by the individual means of the person entering the same, without any understanding or agreement, expressed or implied, that there should be any joint interest whatever in any parcel of land so entered and purchased.

This defendant denies that under and by virtue of any agreement such as is in that behalf in said bill supposed the said parties in said bill named caused any amount whatever of land to be bought upon, along, and in the vicinity of the line of said railroad, at or near the town of Dwight, for their joint account, or for account of any adventure such as in said bill is supposed, or that the said several parties each paid their one-quarter share of said purchase money as aforesaid, or were each entitled to an equal undivided one-quarter interest therein; but, on the contrary, this defendant says that the said several purchases were made by the said respective parties independently, each for himself, without any understanding or agreement that either was to

22 be interested in the property purchased by any other of them.

This defendant denies that the following pieces and parcels of land, to wit, the southwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of section four, (4,) and also the northeast quarter of the northwest quarter and the northwest quarter of the northeast quarter of section nine, (9,) township thirty north, range seven east of the 3d principal meridian, in the county of Livingston, in said State, were ever purchased or put into any such adventure as is in that behalf in said bill supposed.

This defendant says that the whole of the northwest quarter of the northeast quarter of section nine (9) was entered by this defendant for himself, and was then owned by virtue of his original entry thereof, and for which this defendant now holds the patent of the United States to him, dated the 4th day of August, A. D. 1853, except that prior to the 30th day of January, 1854, this defendant had conveyed to the said Chicago and Mississippi Railroad Company the right of way, one hundred feet wide, as in said bill mentioned, by deed dated August 6th, 1853.

This defendant admits that the said two strips of land are correctly described in said bill, but he says that the same are a part of the said northwest quarter of the northeast quarter of section nine, (9,) town. thirty, range seven, so patented to him as aforesaid by the United States, and that the legal title thereto since the said original entry thereof

23 has been and now is in this defendant, and that neither the said Spencer, Lathrop, or the Fells have any interest, equitable or otherwise, in said two strips, nor have they ever had.

This defendant admits that the said Chicago and Mississippi Railroad Company laid its track and built its depots on the land, as in said bill alleged; but whether the Chicago and Alton Railroad Company has become the owner of said land this defendant does not know, and has not been informed, save by said bill, and leaves said complainant to make proof thereof as he may be advised.

This defendant admits that there are three elevators, and not four, of the value stated in the bill, erected partly upon the easterly of said two strips; but he says that the same were erected without the consent of this defendant, and notwithstanding he notified the parties erecting the same that this defendant owned said strips.

This defendant denies that the said fifty feet of land on the west side of the right of way of said railroad company is vacant, but he says that a large part thereof has been wrongfully occupied by said Chicago and Alton Railroad Company, and for a long time, by a side-track, buildings, framing-yard, bridge-timber, and the like.

This defendant admits that the legal title of said strips of ground still remains in him, but he denies that he holds the same in trust for the use of any person or persons whatever in any share or proportion, and he claims that he now owns, and always since the original entry
24 thereof has owned, the same absolutely in fee-simple.

This defendant denies that said complainant has any equitable title or interest whatever in said two strips of land, and whether said Spencer and wife made to said complainant the deed in that behalf in said bill mentioned, dated the 25th of March, 1872, this defendant does not know, and has not been informed, save by said bill, and leaves said complainant to make the proof thereof as he may be advised.

This defendant denies that the said Chicago and Alton Railroad Company have any equitable interest whatever in said two strips of land; and whether any deed of conveyance was made and executed by the widow and heirs at law of the said John Lathrop, dated 12th March, 1872, this defendant does not know, and is not informed, except by said bill, and leaves the complainant to make proof thereof as he may be advised.

This defendant denies that at his death said Lathrop was possessed of any interest whatever in said two parcels of land; but whether said Lathrop left him surviving his widow, Elizabeth Lathrop, and also Mary E. Lathrop, his sole heir at law, this defendant does not know, and is not informed, save by said bill, and cannot answer thereto.

This defendant denies that the said Kersey H. and Jesse W. Fell have any equitable interest whatever in said two parcels of land, or that this defendant is the equitable owner of an undivided one-quarter of the same, but, on the contrary, this defendant says he is the absolute owner in fee-simple of the whole thereof.

25 This defendant says that he does not know what claims the said James Morgan, Charles L. Newell, and John B. Campbell make to the said elevators and buildings on the said easterly strip, but he says that they have no *ro* rights therein as against the title thereto of this defendant.

This defendant denies that the said westerly strip is of equal value with the easterly one, irrespective of the improvements made on the latter.

This defendant denies that said complainant is entitled to have from this defendant a deed of conveyance of any interest whatever in the said two strips of land, or to have the use and occupation of any portion thereof; and this defendant does refuse to recognize the supposed rights of said complainant in the premises.

This defendant says that the said complainant is not entitled to have a partition or division of said lands made among the said several parties mentioned in said bill as entitled to equitable interest therein; and he himself submits to this court that, in order to entitle himself to exhibit

his bill herein, said complainant must allege and prove that he is seized of some legal estate in the land in said bill described, of which partition is sought; and because the said complainant claims no other interest in said lands, or any part thereof, than a supposed equitable one, this defendant insists that the said complainant is not entitled to the relief sought for by said bill, and he claims the same benefit of this objection as if he had for this cause demurred to said bill or
26 otherwise, however properly insisted thereon. And this defendant denies that any other matter or thing in the said bill contained, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to the knowlege or belief of this defendant, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

RICH'D P. MORGAN, J'R.

H. A. GARDNER, J'r,
Sol'r for said Def't.

(Endorsed:) Filed June 14, 1872. W'm H. Bradley, cl'k.

27 And afterwards, to wit, on the 28th day of September, A. D. 1872, the said complainant, by his solicitors, files a replication to the answer of said Richard P. Morgan, j'r, which reads in the words and figures following, to wit:

Replication.

In the circuit court of the United States for the northern district of Illinois, in chancery.

ROBERT P. TANSEY
v.
RICAHRD P. MORGAN, J'R, ET AL.

The replication of Robert P. Tansey, complainant, to the answer of Richard P. Morgan, j'r, one of the defendants herein.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exceptions which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto. and that the said answer of the said defendant is
28 uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct. And humbly prays as in and by his said bill he hath already prayed.

AYER AND KALES,
Complainant's Solicitors.

(Endorsed:) Filed Sept. 28 1872. W. H. Bradley, cl'k.

And afterwards, to wit, on the 20th day of May, A. D. 1873, in the record of the proceedings of said court in said cause is the following entry, to wit:

ROBERT P. TANSEY
v.
RICHARD P. MORGAN, J'R, ET AL. } Chancery.

On motion of the complainant, by his solicitors, and with the consent of the defendants' solicitor, leave is given the complainant to amend his bill herein.

29 *Amendment to bill filed by leave of court.*

In the circuit court of the United States for the northern district of Illinois. In chancery.

ROBERT P. TANSEY
vs.
RICHARD P. MORGAN, J'R, THE CHICAGO AND Alton Railroad Company, Jessey W. Fell, Kersey H. Fell, James Morgan, Charles L. Newell, and John B. Campbell.

Amend bill by striking out after the words "and thereupon your or ator complains and says" all that follows on pages 1, 2, 3, and 4, and down to and including line 8, on page 5, and insert in place thereof the following words:

That heretofore, to wit, on the sixth day of August, 1853, the Chicago and Mississippi Railroad Company was a corporation created by and organized under the laws of the State of Illinois, with authority to locate, lay out, construct, maintain, and operate a railway in said State from Alton to Joliet; that afterwards, on the fourteenth day of February, 1855, the name of said corporation was changed to that of
30 the Chicago, Alton and S't Louis Railroad Company; and that afterwards, on the fifteenth day of October, A. D. 1862, the Chicago and Alton Railroad Company acquired and succeeded to and is now possessed of all the rights, powers, privileges, immunities, and properties of the said Chicago, Alton and S't Louis Railroad Company.

That the said Chicago and Mississippi Railroad Company did, prior to the sixth day of August, A. D. 1853, locate and lay out the railway which the said company was authorized to construct as aforesaid across the northwest quarter of the northeast quarter of section nine, in township thirty north of range seven east of the third principal meridian, now forming a part of the town of Dwight, in the county of Livingston, in said State, and shortly thereafter constructed the said railway as located and laid out, which said railway as located and constructed and all of its appendages are now the property of, and are used and operated by, the Chicago and Alton Railroad Company.

That prior to and at the time of the said location of the said railway through the said northwest quarter of the northeast quarter of said section nine, as aforesaid, the said Richard P. Morgan, j'r, and James C. Spencer were civil engineers in the employ of the said Chicago and Mississippi Railroad Company, and it was a part of the business and duty of the said Richard P. Morgan, j'r, and James C. Spencer to sur-
31 vey, locate, and lay out the said railway, and to procure for the

said company the necessary right of way, depot-grounds, and appurtenances; that by reason of the nature of the employment and duties of the said Richard P. Morgan, j'r, and James C. Spencer they had knowledge in advance of the public relative to the location of the line of said railway and of depots upon and along the same, and concerning the profits likely to result from the laying out of towns on the said line and adjacent to the said depots, and that the said Chicago and Mississippi Railroad Company allowed the said Richard P. Morgan, j'r, and James C. Spencer, and their friends, to avail themselves of such knowledge in respect of said locations and depots for their own benefit.

That prior to and at the time of the location of the said railway over the premises aforesaid, Jesse W. Fell, Kersey H. Fell, and one John Lathrop, were friends of the said Richard P. Morgan, j'r, and said James C. Spencer; and all of said parties desired to avail themselves of the knowledge of said Richard P. Morgan, j'r, and James C. Spencer relative to the location of the line of said railway, and of depots thereon, and for that purpose the said Richard P. Morgan, j'r, a short time prior to the sixth day of August, 1853, entered at the land-office of the United States the northwest quarter of the northeast quarter of section nine, in township thirty north, range seven east of the third principal meridian; and afterwards, on the fourth day of August, 1853, received
32 from the United States a patent therefor. And that the said Jesse W. Fell and Kersey H. Fell, a short time prior to the sixth day of August, 1853, entered at the land-office of the United States the northeast quarter of the northwest quarter of said section nine, in the same township and range, and afterwards, to wit, on the fourth day of August, 1853, received from the United States a patent therefor.

That said James C. Spencer, a short time prior to the sixth day of August, 1853, entered at the land-office of the United States the southwest quarter of the southeast quarter of section four, in the same township and range, and afterwards, to wit, on the fourth day of August, 1853, received from the United States a patent therefor. And that the said John Lathrop, a short time prior to the sixth day of August, 1853, entered at the land-office of the United States the southeast quarter of the southwest quarter of section four, in same township and range, and afterwards, on the fourth day of August, 1853, received from the United States a patent therefor.

Your orator further shows that, at or about the time of the entry of said lands as aforesaid, the said Richard P. Morgan, j'r, Jesse W. Fell, Kersey H. Fell, James C. Spencer, and John Lathrop made and entered into an agreement between themselves that the whole of said lands should constitute a joint adventure, and should be disposed of for the benefit of all of said parties according to their respective interests therein; and in order to more conveniently manage said joint
33 adventure, and plat the said lands as a town, make such dedication for street, alleys, and other purposes as might be desirable, and to make conveyances of such lots and blocks and parcels as might be sold from time to time, the said Jesse W. Fell, Kersey H. Fell, James C. Spencer, and John Lathrop, on or about the twenty-eighth day of July, A. D. 1853, conveyed to the said Richard P. Morgan, j'r, the said several parcels of land so entered by them respectively as aforesaid, and that the last-mentioned conveyances were absolute on their face, yet in fact the said conveyances were made, executed, and received upon a trust that he, the said Richard P. Morgan, j'r, should plat the lands thereby conveyed to him, and the land so entered by him as aforesaid, as the town of Dwight, make such dedications for streets,

alleys, and other purposes as he might deem desirable, and sell and convey such lots, blocks, and parcels of land as he might think proper, for the common benefit of all of said parties, and divide the residue of said lands between them, according to their respective interests, which were agreed and understood to be as follows: Jesse W. Fell and Kersey H. Fell one-quarter, and the said James C. Spencer, John Lathrop, and Richard P. Morgan, junior, one-quarter each.

Your orator further shows unto your honor that prior to the sixth day of August, 1853, the said Chicago and Mississippi Railroad Company located its line of railway across the said northwest quarter of the
34 northeast quarter of section nine aforesaid, and that thereupon the said Richard P. Morgan, junior, by his deed bearing date the day and year last mentioned, conveyed to the said Chicago and Mississippi Railroad Company all the land lying within a distance of fifty feet in width on each side of the said line of the company's railroad, as said central line runs through or across the northeast quarter of said section nine in township thirty-nine north, range seven east of the third principal meridian. And that the said Chicago and Mississippi Railroad Company took possession of the lands described in said last-mentioned deed, and constructed its railway thereon, and erected a depot upon the land in section nine therein described, which railway and depot are now owned and used by the Chicago and Alton Railroad Company.

And your orator further shows that, on the thirtieth day of January, A. D. 1854, the said Richard P. Morgan, junior, in pursuance of the understanding between himself and the said James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell, so had as aforesaid, caused the whole of said premises to be surveyed and laid off into lots and blocks, streets, alleys, and public grounds, as is shown upon Exhibit No. one, herewith filed, and made a plat of the same, which was duly acknowledged and recorded as required by the laws of this State, whereof the said Exhibit No. one is a true and correct copy, to which your orator craves leave to refer with the same advantage to himself as if the
35 said plat were herein more particularly described.

Your orator further shows that afterwards, and prior to the fourteenth day of May, 1858, the said Richard P. Morgan, junior, sold and conveyed to divers persons divers lots and blocks in said town plat for divers sums of money, and in such sales took divers notes and contracts, and that on the day and year last mentioned a division was made between the said Richard P. Morgan, junior, James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell of the proceeds of such portions of said lands as had been sold, and the residue of said lots not sold were divided between the said adventurers and conveyed to them in severalty by the said Morgan, except the lots in the said division to which the said Morgan was entitled, and except also two certain strips or parcels of land in the said town which were not divided between the said adventurers, and in respect whereof the interests of the respective adventurers are not adjusted, but the same, and the interests of the said adventurers therein, were left undivided, and the legal title therein and thereto was by the said adventurers left to remain and be in the said Morgan for the use of all of the said parties, according to their said interests, in the proportion of an equal undivided one-quarter to each as aforesaid.

By AYER & KALES,
Sol'rs, &c.

38 *Answer of the defendant, the Chicago and Alton Railroad Company.*

UNITED STATES OF AMERICA:

In the circuit court of the United States for the northern district of Illinois. In chancery.

The several answer of the Chicago and Alton Railroad Company, one of the defendants, to the bill of complaint of Robert P. Tansey against Richard P. Morgan, junior, Jesse W. Fell, Kersey H. Fell, James Morgan, Charles L. Newell, John B. Campbell, and the said Chicago and Alton Railroad Company, defendants.

This defendant, now and at all times hereafter saving and reserving to itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complaint's' said bill contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, answering, says: That it admits that heretofore, to wit, on the sixth day of August, 1853, the Chicago and Mississippi Railroad Company was a corporation created by and organized under the laws of the State of Illinois, with au-
39 thority to locate, lay out, construct, maintain, and operate a railway in this State from Alton to Joliet. That afterwards, to wit, on the fourteenth day of February, 1855, the name of the said coporation was changed to that of the Chicago, Alton & S't Louis Railroad Company, and that this defendant afterwards, on the fifteenth day of October, A. D. 1862, acquired and succeeded to and is now possessed of all the rights, powers, privileges, immunities, and properties of the said Chicago, Alton and S't Louis Railroad Company, as is in the said bill alleged.

This defendant also admits that the Chicago & Mississippi Railroad Company did, prior to the 6th day of August, A. D. 1853, locate and lay out the railway which the said company was authorized to construct as aforesaid across the northwest quarter of the northeast quarter of section nine in township thirty north, range seven east of the third principal meridian, now forming a part of the town of Dwight, in the county of Livingstone in said State, and shortly thereafter constructed the said railway as located and laid out, and that said railway so located and constructed, and all of its appendages, are now the property of and are used and operated by this defendant as is in the said bill alleged.

This defendant further admits that, prior to and at the time of said location of said railway through the said northwest quarter of the northeast quarter of said section nine as aforesaid, the said Richard P.
40 Morgan, junior, and James C. Spencer were civil engineers in the employ of said Chicago and Mississippi Railroad Company, and that it was a part of the business and duty of the said Richard P. Morgan, junior, and James C. Spencer to survey, locate, and lay out the said railway, and to procure for the said company the necessary right of way, depot grounds, and appurtenances. That by reason of the nature of the employment and duties of the said Richard P. Morgan, junior, and James C. Spencer, they had knowledge in advance of the public relative to the location of the line of said railway and of depots upon and along the same and concerning the profits likely to result from the laying out of towns upon said line and adjacent to the said depots, and that the said Chicago and Mississippi Railroad Company allowed the said Richard P. Morgan, junior, and James C. Spencer and their friends

to avail themselves of such knowledge in respect of the said locations and depots for their own benefit as is in the said bill alleged, but upon the condition and with the understanding that the interests of said company were not to be in any manner prejudiced thereby.

This defendant further admits that prior to and at the time of the location of the said railway over the premises aforesaid, Jesse W. Fell, Kersey H. Fell, and one John Lathrop were friends of the said Richard P. Morgan, junior, and James C. Spencer, and all of said parties
41 desiring to avail themselves of the knowledge of the said Richard P. Morgan, junior, and James C. Spencer relative to the location of the line of said railway, and of depots thereon, and for that purpose the said Richard P. Morgan, junior, Jesse W. Fell, Kersey H. Fell, James C. Spencer, and John Lathrop did, at or about the time in the said bill mentioned, enter at the Land-Office of the United States the several tracts of land in the said bill described, and received from the United States patents therefor, as is in the said bill alleged.

This defendant further admits that at or about the time of the entry of said lands as aforesaid, the said Richard P. Morgan, junior, Jesse W. Fell, Kersey H. Fell, James C. Spencer, and John Lathrop made and entered into an agreement between themselves that the whole of said lands should constitute a joint adventure, and should be disposed of for the benefit of all of the said parties according to their respective interests therein; and in order more conveniently to manage said joint adventure, and to plat the said lands as a town, to make such dedications for streets, alleys, and other purposes as might be desirable, and to make such conveyances of such lots, blocks, and parcels of land as might be sold from time to time, the said Jesse W. Fell, Kersey H. Fell, James C. Spencer, and John Lathrop, on or about the twenty-eighth day of July, A. D. 1853, conveyed to said Richard P. Morgan, junior, the said
42 several parcels of land so entered by them respectively as aforesaid, and that although the said last-mentioned conveyances were absolute on their face, yet, in fact, the said conveyances were made, executed, and received upon a trust that he, the said Richard P. Morgan, junior, should plat the lands thereby conveyed to him, and the land so entered by him as aforesaid, as the town of Dwight, make such dedications for streets, alleys, and other purposes as he might deem advisable, and sell and convey such lots, blocks, and parcels of land as he might think proper for the common benefit of all of said parties, and divide the residue between them according to their respective interests, which were agreed to be as follows: Jesse W. Fell and Kersey H. Fell one-fourth, and the said James C. Spencer, John Lathrop, and Richard P. Morgan, junior, one-fourth each, as is in the said bill alleged.

This defendant, further answering, says that prior to the sixth day of August, A. D. 1853, the said Chicago and Mississippi Railroad Company located its line of railway across the said northwest quarter of the northeast quarter of section nine aforesaid, as is shown upon exhibit marked numbers one and two, hereto attached, and that thereupon the said Richard P. Morgan, junior, by his deed bearing date the day and year last aforesaid, conveyed to the said Chicago and Mississippi Railroad Company all the land lying within a distance of fifty
43 feet in width on each side of said company's railroad, as said center line run through or across the northeast quarter of said section nine, in township thirty north, range seven east, of the third principal meridian, as by the said deed, here in court ready to be produced, will more fully appear.

This defendant, further answering, says that said last-mentioned deed

was made in pursuance of the understanding hereinbefore mentioned: that the interest of the said company, so far as securing its right of way and depot grounds, should be protected in any purchases of lands which might be made by the said Richard P. Morgan, junior, or James C. Spencer, or either of them.

This defendant, further answering, says that the said Chicago and Mississippi Railroad Company took possession of the lands described in said last-mentioned deed, and constructed its railway thereon, and erected a depot upon the land in section nine therein described, which railway and depot are now owned and used by this defendant.

This defendant, further answering, says that on the thirtieth day of January, A. D. 1854, the said Richard P. Morgan, junior, in pursuance of the understanding between himself and the said James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell, so had as aforesaid, caused the whole of said premises to be surveyed and laid off into
44 lots, blocks, streets, alleys, and public grounds, as shown upon Exhibit No. 2, hereto attached, and made a plat of the same, which was duly acknowledged and recorded as required by the laws of this State; that a strip of land fifty feet in width on each side of the lands so conveyed to the Chicago and Mississippi Railroad Company was surveyed and platted, as is shown upon said exhibits numbers one and two; and that the said plat was made with the assent of the said James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell; and that the said Richard P. Morgan, junior, James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell intended by such survey and plat to dedicate, and did in fact dedicate, the said strips of land for depot purposes.

And this defendant, further answering, says that shortly after the said thirtieth day of January, A. D. 1854, the said Richard P. Morgan, junior, and the said James C. Spencer, in the course of their employment and in the discharge of their duties as engineers of the said Chicago and Mississippi Railroad Company, caused to be made for said company a tract-book, wherein was delineated its right of way and depot grounds and appendages, which said book was placed among the archives of the said company to enable its officers and employees to know, by reference thereto, the location and extent of said right of way and depot-grounds and appendages, and that in the said tract-book, so made and placed among the archives of the said company as aforesaid, the said two
45 strips of land are shown as upon exhibit number one, hereto attached. And this defendant avers that the said company relied upon the said tract-book as a true and correct representation of the facts therein stated and shown, and that it and this defendant have in good faith acted upon the same in laying down their tracks and authorizing the said premises to be used for depot and elevator purposes, as is hereinafter mentioned. And that the said Richard P. Morgan, junior, and James C. Spencer are precluded from claiming, as against your orator, that the said tract-book was not and is not correct.

This defendant, further answering, says that afterwards, and prior to the fourteenth day of May, A. D. 1858, the said Richard P. Morgan, junior, sold and conveyed to divers persons divers lots and blocks in said shown plat for divers sums of money, and in the transaction of said business received divers notes and contracts, and incurred divers expenses, and that, on the day and year last aforesaid, a division was made between the said Richard P. Morgan, junior, James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell, according to their respective interests, of the proceeds of such portions of such property as had

been sold after deducting the expenses, and a partition was made between said parties of the residue of the whole of the said premises, excepting such portions as had been dedicated for streets, alleys, and other purposes as aforesaid; whereupon the said Richard P. Morgan, junior, conveyed to the said James C. Spencer, John Lathrop, Jesse
46 W. Fell, and Kersey H. Fell, severally, the lots and blocks by them severally taken in the adjustment of said adventure, as by copies of said deeds, ready here in court to be produced, will more fully appear.

This defendant, further answering, says that the said two strips of land so dedicated for depot purposes as aforesaid, were not divided between the said parties for the reason that the same had been so dedicated as aforesaid, and solely for that reason, as all parties understood at that time, and that all parties acted in accordance with such understanding in making said division in closing the said adventure.

This defendant, further answering, says that for a long time after said dedication was so made as aforesaid, and after the said division was so made as aforesaid, neither of the said parties claimed or asserted any right, title, or interest in or to the said premises so dedicated.

This defendant, further answering, says that afterwards, on or about the ninth day of October, A. D. 1867, divers disputes having arisen between the said Richard P. Morgan, junior, and this defendant relative to their respective rights, claims, and interests in and to the said pieces or parcels of land so dedicated as aforesaid; and thereupon, in order to settle and determine the said disputes and differences, the said Richard P. Morgan, junior, and this defendant did, by an instrument in writing dated the day and year last aforesaid, agree to submit and did submit the said differences and disputes to the arbitrament and final determination of honorable David Davis and honorable Thomas Drummond, and agreed that the determination and decision of the said Davis
47 and Drummond should be final and conclusive, both in law and equity, as between the said parties.

This defendant, further answering, says that the said David Davis and Thomas Drummond did take upon themselves the burden of the said arbitrament, and thereafter, on the first day of December, 1868, did award in writing under their hands as follows:

"We have considered the question submitted to us by the parties in this case, and upon the agreed statement of the facts and the arguments of counsel, and are of opinion that the grant made by M'r Morgan of the right of way to the railroad company in 1853, and the survey, plotting, and recording of the town of Dwight in 1854, the running of streets along the disputed strips of land, and the laying off of lots abutting on the same and fronting on the railway, in the manner set forth in the said plat and record, together with the conduct of the said Morgan touching the said strips of land since the year 1854, do constitute a dedication of the same to the public. We give no opinion as to the manner in which the two strips of land can be used, whether by the railway company or by the public."

And this defendant does and will insist that the said award of the said David Davis and Thomas Drummond is, and ought to be, held a conclusive bar, precluding the said Richard P. Morgan, junior, James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell from asserting or claiming any right, title, or interest in or to the said premises as against this defendant and those claiming under it.

This defendant, further answering, says that said John Lathrop,
48 prior to the year 1872, died intestate, leaving him surviving his widow Elizabeth Lathrop and only child Mary E. Lathrop, who

was and is his only heir-at-law. And that this defendant, in order to quiet all claims relative to said two parcels of land so dedicated for depot purposes as aforesaid, did, on the twelfth day of March, A. D. 1872, procure from said Elizabeth Lathrop and Mary E. Lathrop a quit-claim deed, dated the day and year last aforesaid, to this defendant of the said two parcels of land, as by the said deed, ready here in court to be produced, will more fully and at large appear.

This defendant, further answering, says that on the twenty-fifth day of March, A. D. 1872, the said James C. Spencer, by his deed of that date, conveyed to the said Robert P. Tansey all his, the said Spencer's, right, title, and interest in and to the said two parcels of land so dedicated for depot purposes as aforesaid, as is in the said bill alleged, but this defendant does and will insist that neither it nor the said Robert P. Tansey acquired any title to said premises by virtue of the said deeds or either of them.

This defendant, further answering, admits that the tracks, side and other tracks, depot and building of this defendant are located as is in said bill alleged, and that elevators of great value have been erected partly upon said strips of land, and that said James Morgan, Charles L. Newell, and John B. Campbell claim to own the said elevators, which elevators were erected and are used for depot purposes, and that the removal of said elevators and tracks from said two strips of land
49 would cause great and irreparable injury to said parties and this def't; and this defendant denies all and all manner of fraud, combination, and confederacy wherewith it is by the said complainant in his said bill charged, without this that neither matter or thing in the said bill of complaint contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge and belief of this defendant; all of which matters and things this defendant is ready and willing to make plain and prove, and prays to be dismissed with its reasonable costs, etc.

THE CHICAGO & ALTON RAILROAD COMPANY,
By its sol'r, C. BECKWITH.

(Endorsed:) Filed May 21, 1873. W'm H. Bradley, cl'k.

52 And afterwards, to wit, on the 23d day of May, A. D. 1873, in the record of the proceedings of said court in said cause is the following entry, to wit:

ROBERT P. TANSEY,
v.
RICHARD P. MORGAN ET AL. } Chancery.

On motion of the defendant, the Chicago and Alton Railroad Company leave is given it to file a cross bill.

Cross-bill, Chicago and Alton Railroad Company, filed by leave of court.

53 To the hon. Judges of the circuit court of the United States for the northern district of Illinois:

The Chicago and Alton Railroad Company, a corporation created by and organized under the laws of the State of Illinois, the shareholders whereof are citizens of said State, brings this its cross-bill of complaint against Robert P. Tansey, a citizen of the State of Missouri,

Richard P. Morgan, j'r. Jesse W. Fell, Kersey H. Fell, James Morgan, and Charles L. Newell, citizens of the State of Illinois, and John B. Campbell, a citizen of the State of Kentucky. And thereupon your orator complains and says that heretofore to wit, on the 6th day of August, A. D. 1853, the Chicago and Mississippi Railroad Company was a corporation created by and organized under the laws of the State of Illinois, with authority to locate, lay out, construct, maintain, and operate a railway in said State from Alton to Joliet; that afterwards, to wit, on the 14th day of February, A. D. 1855, the name of said corporation was changed to that of the Chicago, Alton and S't Louis Railroad Company, and that your orator afterwards, on the 15th day of October,
A. D. 1862, acquired and succeeded to and is now possessed of
54 all the rights, powers, privileges, immunities, and properties of the said Chicago, Alton and S't Louis Railroad Company.

Your orator further shows that the said Chicago and Mississippi Railroad Company did, prior to the 6th day of August, A. D. 1853, locate and lay out the railway which the said company was authorized to construct as aforesaid, across the northwest quarter of the northeast quarter of section nine, in township thirty north, of seven east, of the third principal meridian, now forming a part of the town of Dwight, in county of Livingston, in said State, and shortly thereafter constructed the said railway as located and laid out, which said railway so located and constructed, and all of its appendages, are now the property of and are used and operated by your orator; and herewith filed, marked "Exhibit No. 1," is a plat of said railway and appendages, as located and constructed, to which your orator craves leave to refer as a part of this its bill of complaint, with the same benefit to itself as if the same were herein more fully described; that prior to and at the time of the said location of the said railway through the said northwest quarter of the northeast quarter of said section nine, as aforesaid, the said Richard P. Morgan, j'r, and James C. Spencer were civil engineers in the employ of the said Chicago and Mississippi Railroad Company, and that it was
a part of the business and duty of the said Richard P. Morgan,
55 j'r, and James C. Spencer to survey, locate, and lay out the said railway through the lands above mentioned, and to procure for the said company the necessary right of way, depot-grounds, and appurtenances; that by reason of the nature of the employment and duties of the said Richard P. Morgan, j'r, and James C. Spencer they had knowledge in advance of the public relative to the location of the line of said railway and of depots upon and along the same, and concerning the profits likely to result from the laying out of towns upon said line and adjacent to the said depots, and that the said Chicago and Mississippi Railroad Company allowed the said Richard P. Morgan, j'r, and James C. Spencer and their friends to avail themselves of such knowledge in respect to said locations and depots for their own benefit, upon condition and with the understanding that the interests of the company were not to be in any manner prejudiced thereby.

That prior to and at the time of the location of the said railway over the premises aforesaid, Jesse W. Fell, Kersey H. Fell, and one John Lathrop were friends of the said Richard P. Morgan, j'r, and James C. Spencer, and all of said parties desired to avail themselves of the knowledge of the said Richard P. Morgan, j'r, and James C. Spencer relative to the location of the line of said railway and of depots thereon, and
for that purpose the said Richard P. Morgan, j'r, a short time
56 prior to the 6th day of August, A. D. 1853, entered at the land-office of the United States *for* the northwest quarter of the north-

east quarter of section nine, in township thirty north, of range seven east, of the third principal meridian, and afterwards, on the 4th day of August, A. D. 1853, received from the United States a patent therefor; and that the said Jesse W. Fell and Kersey H. Fell, a short time prior to the 6th day of August, A. D. 1853, entered at the land-office of the United States the northeast quarter of the northwest quarter of said section nine, in the same township and range, and afterwards, to wit, on the 4th day of August, A. D. 1853, received from the United States a patent therefor; that said James C. Spencer, a short time prior to the 6th day of August, A. D. 1853, entered at the land-office of the United States the southwest quarter of the southeast quarter of section four, in the same township and range, and afterwards, to wit, on the 4th day of August, A. D. 1853, received from the United States a patent therefor; and that the said John Lathrop, a short time prior to the 6th day of August, A. D. 1853, entered at the land office of the United States the southeast quarter of the southwest quarter of section four of the same township and range, and afterwards, to wit, on the 4th day of August, A. D. 1853, received from the United States a patent therefor.

Your orator further shows that at or about the time of the entry of said lands as aforesaid the said Richard P. Morgan, j'r, Jesse W.
57 Fell, Kersey H. Fell, James C. Spencer, and John Lathrop made and entered into an agreement between themselves that the whole of said lands should constitute a joint adventure, and should be disposed of for the benefit of all of said parties according to their respective interests therein; and in order more conveniently to manage said joint adventure, and to plat said lands as a town, to make such dedications for streets, alleys, and other purposes as might be desirable, and to make conveyances of such lots, blocks, and parcels as might be sold from time to time, the said Jesse W. Fell, Kersey H. Fell, James C. Spencer, and John Lathrop, on or about the 28th day of July, A. D. 1853, conveyed to said Richard P. Morgan, j'r, the said several parcels of land so entered by them respectively as aforesaid; and that although the said last-mentioned conveyances were absolute on their face, yet, in fact, the said conveyances were made, executed, and received upon the trust that he, the said Richard P. Morgan, j'r, should plat the lands thereby conveyed to him, and the land so entered by *by* him as aforesaid as the town of Dwight, make such dedications for streets, alleys, and other purposes as he might deem advisable, and sell and convey such lots, blocks, and parcels of land as he might think proper for the common benefit of all of said parties, and divide the residue thereof according to their respective interests, which were agreed to be
58 as follows: Jesse W. Fell and Kersey H. Fell one fourth, and the said James C. Spencer, John Lathrop, and Richard P. Morgan, j'r, one-fourth each.

Your orator further shows that prior to the 6th day of August, A. D. 1853, the said Chicago and Mississippi Railroad Company located its line of railway across the said northwest quarter of the northeast quarter of section nine, as aforesaid, as is shown upon exhibit marked "No. 1," herewith filed, and that thereupon the said Richard P. Morgan, j'r, by his deed bearing date the day and year last aforesaid, conveyed to the said Chicago and Mississippi Railroad Company all the land lying within a distance of fifty feet in width on each side of the center line of said company's railroad, as said center line run through or across the northeast quarter of said section nine, in township thirty north, range seven east, of the third principal meridian, as by the said deed, here in court ready to be produced, will more fully appear. That said last-mentioned

deed was made in pursuance of the understanding hereinbefore mentioned—that the interest of the said company, so far as to secure its right of way and depot-grounds, should be protected in any purchases of lands which might be made by the said Richard P. Morgan, j'r, and James C. Spencer, or either of them.

Your orator further shows that the said Chicago and Mississippi Railroad Company took possession of the lands described in said last-
59 mentioned deed, and constructed its railway thereon, and erected a depot upon the land in section nine therein described, which railway and depot are now owned and used by your orator.

Your orator further shows that on the 30th day of January, A. D. 1854, the said Richard P. Morgan, j'r, in pursuance of the understanding between himself and the said James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell, so had as aforesaid, caused the whole of said premises to be surveyed and laid off into lots and blocks, streets, alleys, and public grounds, as is shown upon Exhibit No. 2, herewith filed, and made a plat of the same, which was duly acknowledged and recorded as required by the laws of this State. That a strip of land fifty feet in width on each side of the land so conveyed to the said Chicago and Mississippi Railroad Company was surveyed and platted as is shown upon said Exhibits No. 1 and 2, and that the said Richard P. Morgan, j'r, James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell intended by such survey and plat to dedicate, and did in fact dedicate, the said strips of land for depot purposes.

Your orator further shows that shortly after the 30th day of January, A. D. 1854, the said Richard P. Morgan, j'r, and James C. Spencer, in the course of their employment, and in the discharge of their duties as engineers of said Chicago and Mississippi Railroad Company,
60 caused to be made for said company a tract-book, wherein was delineated its right of way, depot-grounds, and appendages, which said book was placed among the archives of said company, to enable its officers and employees to know by reference thereto the location and extent of said right of way, depot-grounds, and appendages; that in the said tract-book, so made and placed among the archives of the said company as aforesaid, the said two strips of land are shown as on Exhibit No. 1, herewith filed. And your orator avers that the said company relied upon the tract-book as a true and correct representation of the facts therein stated and shown, and that it and your orator have in good faith acted upon the same in laying down their tracks and authorizing the said premises to be used for depot purposes, as is hereinafter mentioned, and that said Richard P. Morgan, j'r, and James C. Spencer are estopped from claiming as against your orator that said tract-book is not correct.

Your orator further shows that afterwards, and prior to the 14th day of May, A. D. 1858, the said Richard P. Morgan, j'r, sold and conveyed to divers persons divers lots and blocks in said town plat for divers sums of money, and in the transaction of said business received divers notes and contracts and incurred divers expenses; and that on the day and year last aforesaid a division was made between the said
61 Richard P. Morgan, j'r, James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell, according to their respective interests *interests*, of the proceeds of such portions of said property as had been sold, after deducting expenses, and a partition was made between the said parties of the residue of the whole of said premises, excepting such portions as had been dedicated for streets, alleys, and other purposes, as aforesaid. Whereupon the said Richard P. Morgan, j'r, conveyed to said James C. Spencer, John Lathrop, Jesse W. Fell, and Ker-

sey H. Fell, severally, the lots and blocks by them severally taken in the adjustment of said adventure, as by copies of said deeds herewith filed, marked Exhibits Nos. 3, 4, 5, & 6, will more fully appear.

Your orator further shows that after making and recording of said plat as aforesaid, and after the making of said tract-book as aforesaid, the said Chicago and Mississippi Railroad Company, relying upon the dedication therein shown, laid down upon said strips of land divers railway-tracks for use in connection with said main track, which are essential in the operation of said railway, and whereof the removal would cause great and irreparable injury to your orator.

Your orator further shows that, relying upon the said dedication so made as aforesaid, your orator did, on the 1st day of July, A. D. 1864, make and enter into a certain contract or lease of that date with one Joseph McPherson, wherein and whereby your orator released to the said Joseph McPherson the following-described premises, that is
62 to say, commencing at a point 32 feet east from the centre of the main track, which is south of the north line of the park on the west side of the main track and south of the depot-buildings, and running south 150 feet, and east to the line of the company's right of way, as by a copy of said lease herewith filed, marked "Exhibit No. 7," will more fully appear.

Your orator further shows that said Joseph McPherson, soon after the execution of said contract or lease, erected upon said premises a good and substantial warehouse or elevator, which has from that time been used and is now used for the purposes for which it was erected, and that said elevators partly upon and extend to the east line of the east strip of the fifty feet hereinbefore mentioned; and that afterwards, on or about the 13th day of April, A. D. 1870, all the right, title, and interest of the said Joseph McPherson in and to said premises came by assignment to, and was vested in, the said James Morgan, who has since that time occupied and now occupies said premises by his tenant, one E. L. Gooding, for the purposes in the said lease mentioned.

Your orator further shows that, relying upon the said dedication so made as aforesaid, your orator did, on the 12th day of September, A. D. 1866, make and enter into a certain other contract or lease of that date with said John B. Campbell, wherein and whereby your orator leased to the said John B. Campbell the following-described premises,
63 that is to say: Commencing at a point in the south line of the cattle shoot as now located at Dwight, easterly at right angles from the center of the main track of the Chicago and Alton Railroad, and thirty-two feet distant therefrom; thence southerly parallel with said main track 100 feet; thence easterly at right angles with said main track 68 feet to the line of the street; thence northerly along the line of the street 100 feet; thence westerly to the place of beginning, as by a copy of said lease herewith filed, marked "Exhibit No. 8," will more fully appear.

Your orator further shows that said John B. Campbell, soon after the execution of the lease last mentioned, erected upon the premises therein described a good and substantial warehouse or elevator, which from that time hath been and is now used for the purposes for which it was erected, and has been for some time past and is now occupied by Eugene R. Stevens, as a tenant of the said John B. Campbell, for the purposes in the said lease mentioned.

Your orator further shows that, relying upon said dedication so made as aforesaid, your orator did, on the 2nd day of January, A. D. 1868, make and enter into a certain contract or lease of that date with James

G. Strong and said Charles L. Newell, whereby your orator leased to the said James G. Strong and Charles L. Newell the following-described premises, that is to say: Beginning at a point three hundred and
64 nineteen feet south along the centre of the Chicago and Alton Railroad Company, from the south line of Franklin street and east at right angles with said centre line thirty-three and a half feet; thence for the north boundary-line east at right angles to said centre line to the eastern boundary-line of the land owned by the Chicago and Alton Railroad Company; thence along the eastern boundary-line of the land owned by the said railroad company fifty seven feet; thence west at right angles to a point which shall be thirty-three and a half feet distant from the centre of the main track of said railroad; thence north parallel with the east boundary-line of said company's land to the place of beginning; also commencing four hundred and seventy-six feet measured along the centre line of the main track of said road and thirty-three and a half feet distant at right angles from it; thence east at right angles to main track to the east line of the company's land; and thence south along said east line twenty-eight feet; thence west at right angles to a point thirty-three and a half feet from the center of the main track; thence north to the place of beginning, as by a copy of said lease herewith filed, marked "Exhibit No. 9," will more fully appear.

Your orator further shows that, soon after the execution of said lease the said James G. Strong and Charles L. Newell erected upon the premises first described in said last-mentioned lease a good and sub-
65 stantial warehouse or elevator, which from that time hath been and is now used for the purposes in said lease mentioned, and that said warehouse is partly upon and extends to the east line of the said strip of land on the east side of said railroad hereinbefore mentioned; and that on or about the 20th day of February, A. D. 1869, all the right, title, and interest of the said James G. Strong in and to said premises came to and was vested by assignment in the said Charles L. Newell, and that said premises have been for some time past and are now occupied for the purposes in the said lease mentioned by persons claiming under the said Charles L. Newell.

Your orator further shows that it has from time to time allowed divers persons transacting freight business with it at its depot at the town of Dwight aforesaid to pass and repass over said premises so dedicated as aforesaid for the purpose of bringing freight to and removing freight from said depot, and has from time to time allowed said persons or some of them to store said freight or some part thereof upon said premises, as their convenience and that of your orator in the transaction of said business required, and that among the persons so allowed to pass and repass over said premises for the purpose aforesaid, and to store freight temporarily upon said premises, is one David McWilliams, of Dwight aforesaid, and that the said Richard P. Morgan, j'r, now claims
66 compensation of the said David McWilliams for the use and occupancy of said premises so allowed to him by your orator as aforesaid, and that the circumstances under which the said McWilliams occupies and used the said premises are such that if the said Morgan is allowed to recover compensation for the use thereof from the said David McWilliams your orator would be bound to indemnify him and pay the same.

Your orator further shows that for a long time after said dedication was so made as aforesaid, and after the said division was so made as aforesaid, neither of said parties, neither the said Richard P. Morgan, j'r, James C. Spencer, John Lathrop, Jesse H. Fell, nor Kersey H. Fell, claimed or asserted any right, title, or interest in or to the premises so

dedicated as aforesaid, nor made any objection to the use of the same for the purposes for which they were dedicated, and during all that time paid no taxes thereon and in no manner asserted or claimed ownership thereto.

Your orator further shows that afterwards, to wit, on or about the 9th day of October, A. D. 1867, divers differences and disputes having arisen between the said Richard P. Morgan j'r, and your orator relative to said two strips of land so dedicated as aforesaid, which were then undetermined, for the purpose of settling and putting an end to said disputes and differences, the said Richard P. Morgan, j'r, and your orator entered into a certain agreement in writing, wherein and whereby the said
67 parties last mentioned agreed to submit and did submit the said differences and disputes to the arbitrament, award, and determination of the honorable David Davis and Thomas Drummond, whose determination and decision it was agreed should be final and conclusive between said parties, as by a copy of said agreement, herewith filed, marked "Exhibit No. 10," will more fully and at large appear, to which agreement your orator craves leave to refer as a part of this its bill of complaint with the same advantage as if the same was here set for that length.

Your orator further shows that the said David Davis and Thomas Drummond, having assumed upon themselves the burden of said arbitration, and having heard the said parties and their arrogations and proofs of and concerning the said matters in controversy, did award and determine that the said two strips of land were dedicated to the public, as by a copy of said award, herewith filed and marked "Exhibit No. 11," will more fully and at large appear, to which your orator craves leave to refer as a part of this its bill of complaint, with the same advantage to itself as if the same were herein set forth at length.

And your orator further shows that the said award and determination of the said David Davis and Thomas Drummond is and ought to be held a conclusive bar against the said Richard P. Morgan, j'r, James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell, from
68 asserting or claiming any right, title, or interest in or to the said premises as against your orator and those claiming under it.

Your orator further shows that the said John Lathrop, prior to the year 1872, died intestate, leaving him surviving his widow, Elizabeth Lathrop, and an only child, named Mary E. Lathrop, who was and is his only heir at law; and that your orator, in order to quiet all claims relative to said two parcels of land so dedicated for depot purposes as aforesaid, did, on the 12th day of March, A. D. 1872, procure from the said Elizabeth Lathrop and Mary E. Lathrop a quitclaim deed, dated the day and year last aforesaid, conveying to your orator all their right, title, and interest to the said two parcels of land, as by the said deed, ready here in court to be produced, will more fully and at large appear.

Your orator further shows that, on the 25th day of March, A. D. 1872, the said James C. Spencer, by his deed of that date, conveyed to the said Robert P. Tansey all his, the said Spencer's, right, title, and interest in and to the said two parcels of land so dedicated for depot purposes as aforesaid, under and by virtue of which deed the said Robert P. Tansey claims title to an undivided one-fourth of said premises in his original bill of complaint filed in this court, as is hereinafter mentioned.

Your orator further shows that, on the 10th day of April, A. D. 1872, the said Robert P. Tansey exhibited, in the circuit court of the
69 United States for the northern district of Illinois, his bill of complaint against the said Richard P. Morgan, j'r, Jesse W. Fell, Kersey H. Fell, John B. Campbell, Charles L. Newell, and your orator, therein set-

ting forth, among other things, that the said Robert P. Tansey was the equitable owner of an undivided one fourth part of the said two parcels of land so dedicated as aforesaid; that the said Jesse W. Fell and Kersey H. Fell were the equitable owners of another undivided one-fourth part of the same; that your orator was the equitable owner of another one-fourth part thereof, and that the said Richard P. Morgan, j'r, was the owner of an undivided one-fourth part thereof, and praying that the title of the said Robert P. Tansey might be established, and that partition of the said premises might be made between said parties according to their several interests as alleged in said bill, which suit is still depending and undetermined in said court; and whereas your orator has filed its answer setting forth the dedication of said premises as is herein set forth, as by a reference to the said bill and answer will more fully and at large appear.

Your orator further shows that the said Richard P. Morgan, j'r, for the purpose of harrassing your orator and the said persons so occupying or claiming portions of said premises, as aforesaid, has commenced, in the circuit court of Livingston County, an action of ejectment against your orator for a portion of said two parcels of land, so dedica-
70 ted as aforesaid, to which action your orator has appeared, and which is still depending in said court; that the said Richard P. Morgan, j'r, has also commenced an action of ejectment in the circuit court of said Livingston County against the said Eugene R. Stevens, for another portion of said premises, so dedicated as aforesaid, to which action the said Eugene R. Stevens has appeared, and which action is still depending in said court; and that the said Richard P. Morgan, j'r, has also commenced another action of ejectment against the said E. L. Gooding for another portion of said premises. so dedicated as aforesaid, in which said Gooding has appeared, and which suit is still depending in said court; and that the said Richard P. Morgan, j'r, has also commenced an action against the said David McWilliams, to recover for the use and occupation of a portion of said premises, so dedicated as aforesaid, in which suit the said David McWilliams has appeared, and which is still depending in said court; and that the said Richard P. Morgan, j'r, has also instituted suits against the said Eugene R. Stevens, E. L. Gooding, and your orator, respectively, for the recovery of the mean profits of said premises, so dedicated as aforesaid, in which suits the said Eugene R. Stevens, E. L. Gooding, and your orator have respectively appeared, and which suits are still depending in said court; and that the said Richard P. Morgan, j'r, makes and asserts other
71 claims against the said David McWilliams and divers other parties for the use and occupation of said premises under your orator, when, in truth and in fact, as against your orator and all persons occupying said premises under *or* it or by its permission, he has no just or equitable claim; and they well hoped that the said Richard P. Morgan, j'r, would have foreborne to prosecute the said suits against the said Eugene R. Stevens, E. L. Gooding, David McWilliams, and your orator, and would have dismissed the same and would have forborne to assert any claim for the use and occupation of said premises by persons occupying the same under your orator, and for that purpose your orator hath frequently and in a friendly manner applied to him, the said Richard P. Morgan, j'r, and requested him so to do, but with such reasonable request the said Richard P. Morgan, j'r, refuses to comply.

To the end, therefore, that the said Richard P. Morgan, j'r, Robert P. Tansey, Jesse W. Fell, and Kersey H. Fell may, if they can, show why your orator should not have the relief hereby prayed, and may, without oath, their respective oaths being hereby expressly waived, according to

the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, correct, and perfect answer make to all and singular the matters aforesaid, and that the said two parcels of land hereinbefore described as dedicated for depot pur-
72 poses may be declared a legal and valid dedication of the same, and that neither the said Richard P. Morgan, j'r, Robert P. Tansey, Jesse W. Fell, nor Kersey H. Fell have any right, title, or interest in or to the same, or to the use or occupation thereof, or to compensation for the same, and that the said Richard P. Morgan, j'r, Robert P. Tansey, Jesse W. Fell, and Kersey H. Fell may be respectively required, by decree of said court, to execute and deliver to your orator such proper releases as will forever release and discharge their respective claims against your orator and all persons claiming under it in respect of said premises, of every matter or thing concerning the same, and that your orator may have such other further and different relief in the premises as the nature of the case may require and as may be agreeable to equity.

May it please your honors, the premises considered, to grant unto your orator a writ of subpœna, issuing out of this court according to the usual course of the practice thereof, requiring the said Richard P. Morgan, j'r, Robert P. Tansey, Jesse W. Fell, and Kersey H. Fell to appear in this court and answer the premises, and to stand to and abide by the order of the court therein.

And your orator will ever pray, etc.

THE CHICAGO & ALTON RAILROAD COMPANY, [SEAL.]
By its solicitor, C. BECKWITH.

Attest:
W. M. LARRABEE,
Secretary.

75 EXHIBIT No. 3.

This indenture, made this fourteenth day of May, in the year of our Lord eighteen hundred and fifty-five, between Richard P. Morgan, j'r, and Mary E. Morgan, his wife, of the county of McLean and State of Illinois, of the first part, and James C. Spencer, of the county of Will and State of Illinois, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one hundred dollars to them paid, the receipt whereof is hereby acknowledged, do grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns, certain tract or parcel of land with the appurtenances, lying and being in the county of Livingston and State of Illinois, described as follows, to wit: Lots four, five, and six, of block one; all of block two; lots nine, ten, eleven, twenty-two, twenty-four, twenty-five, and twenty-six, of block six; lots eleven, twelve, thirteen, and fourteen, of block seven; all of block nine; lots nine, ten, eleven, twelve, thirteen, fourteen, twenty-one, and twenty-two, twenty-three and twenty-four, of block ten; lots eighteen, nineteen, twenty, and twenty-one, of block eleven; lots six, five, seven, eight, nine, fifteen, sixteen, seventeen, and eighteen, of block twelve; lots eighteen, nineteen, twenty, twenty-one, and twenty-two, of block thirteen; lots seven, eight, sixteen, seventeen, eighteen, nineteen, and thirty, of block fourteen; lots three, eight, seven, and nine, of
76 block fifteen; lots four, five, and six, of block seventeen; lots one and three, of block eighteen; lots two, ten, eleven, twenty, twenty-one, and thirty, of block nineteen; lots nine, ten, twenty-one, twenty-two, twenty-three, and twenty-four, of block twenty; lots one, three,

four, seventeen, eighteen, twenty-two, twenty-three, and twenty-seven, of block twenty-two; lots three, four, fifteen, sixteen, seventeen, and eighteen, of block twenty-three; lot five, of block twenty-four, all in the town of Dwight, in said county of Livingston; also lots fourteen and fifteen of block twenty of said town: To have and to hold the aforesaid-granted premises to the said party of the second part, his heirs and assigns, to them and their use and behoof forever. And the said party of the first part do hereby, for themselves and their heirs, executors, and administrators, covenant with the said party of the second part, his heirs and assigns, that they are lawfully seized in fee-simple of the above-granted premises; that they are free from all incumbrances; that they have good right to sell and convey the same to the said party of the second part; and that they and their heirs, executors, and administrators will warrant and defend the said track or parcel of land to the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof the said parties of the first part have hereunto set their hand and seal on the day and year first above written.

RICHARD P. MORGAN, J'R. [SEAL.]
MARY E. MORGAN. [SEAL.]

77 Signed, sealed, and delivered in presence of—
Z. LAWRENCE.

STATE OF ILLINOIS,
McLean County, ss:

I, Z. Lawrence, an acting justice of the peace in and for said county, do hereby certify that the above-named Richard P. Morgan, j'r, and Mary E. Morgan, his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same, this day, in their proper persons, came before me and acknowledged that they signed, sealed, and delivered the said deed to the use and purposes therein mentioned; and the said Mary E. Morgan, wife of the said Richard P. Morgan, j'r, having been made fully acquainted with the contents of said deed, and by me examined separate and apart from her said husband, declared that she signed and acknowledged said deed and relinquished her dower in and to said lands thereby conveyed, freely, voluntarily, and without compulsion of her said husband.

In testimony whereof I have hereunto set my hand and seal this fourteenth day of May, A. D. 1855.

Z. LAWRENCE, *J. P.* [SEAL.]

STATE OF ILLINOIS,
McLean County:

I, E. H. Rood, clerk of the county court in and for said county
78 and State aforesaid, do hereby certify that Z. Lawrence, esq., whose genuine signature appears to the foregoing certificate, was at the time of signing the same an acting justice of the peace in and for said county, duly elected, commissioned, and qualified to his said office, as appears to me of record.

Witness my hand this 18th day of June, A. D. 1855, the seal of said court being hereto affixed.

[SEAL.]

E. H. ROOD, *Clerk*,
Per N. G. BLAIN, *Dep.*

Filed June 19, 1855.

79 EXHIBIT No. 4.

(Copy.)

This indenture, made this fourteenth day of May, in the year of our Lord eighteen hundred and fifty-five, between Richard P. Morgan, j'r, and Mary E. Morgan, his wife, of the county of McLean and State of Illinois, of the first part, and John Lathrop, of the city of Buffalo and State of New York, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one hundred dollars to them paid, the receipt whereof is hereby acknowledged, do grant, bargain, sell, convey, and confirm unto the said party of the second part, and his heirs and assigns, certain tract or parcel of land with the appurtenances, lying and being in the county of Livingston and State of Illinois, described as follows, to wit: All of block three; lots twelve, thirteen, fourteen, fifteen, twenty-seven, twenty-eight, twenty-nine, and thirty, of block six; lots seven, eight, nine, ten, twenty, twenty-one, twenty-two, and twenty-three, of block seven; lots twenty-five, twenty-six, twenty-seven, and twenty-eight, of block ten; lots one, two, five, six, twenty-two, twenty-three, twenty-four, and twenty-five, of block eleven; lots ten, eleven, twelve, thirteen, fourteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty seven, and twenty-eight, of block twelve; lots twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, of block thirteen; lots three, nine, twenty-eight, and twenty-nine, of block fourteen; lots two and eleven, of block fif-
80 teen; lots two and ten, of block eighteen; lots four, five, six, seven, eight, nine, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven, of block nineteen; lots eleven, twelve, thirteen, sixteen, twenty-five, twenty-six, twenty-seven, and twenty-eight, of block twenty; lots two, nineteen, twenty, twenty-one, of block twenty-two; lots five, six, thirteen, fourteen, nineteen, and twenty, of block twenty-three; lots one, two, three, and six, of block twenty-four, all in the town of Dwight, in the county of Livingston aforesaid: To have and to hold the aforesaid granted premises to the said party of the second part, his heirs and assigns, to them and their use and behoof forever. And the said party of the first part do hereby, for themselves and their heirs, executors, and administrators, covenant with the said party of the second part, his heirs and assigns, that they are lawfully seized in fee-simple of the above-granted premises; that they are free from all incumbrances; that they have a good right to sell and convey the same to the said party of the second part, and that they and their heirs, executors, and administrators will warrant and defend the said tract or parcel of land to the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof the said party of the first part have hereunto set their hands and seals on the day and year first above written.

RICHARD P. MORGAN, J'R. [L. S.]
MARY E. MORGAN. [L. S.]

81 Signed, sealed, and delivered in presence of—
Z. LAWRENCE.

STATE OF ILLINOIS,
Livingston County:

I, Z. Lawrence, an acting justice of the peace in and for said county, do hereby certify that Richard P. Morgan and Mary E. Morgan, his

wife, who are persons known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same, this day, in their proper persons, came before me and acknowledged that they signed, sealed, and delivered the said deed for the use and purposes therein mentioned; and the said Mary E. Morgan, wife of the said Richard P. Morgan, j'r, having been made fully acquainted with the contents of said deed, and by me examined separate and apart from her said husband, declared that she signed and acknowledged said deed, and relinquished her dower in the land thereby conveyed, freely, voluntarily, and without compulsion of her said husband.

In testimony whereof I have set my hand and seal this fourteenth day of May, A. D. 1855.

Z. LAWRENCE, *J. P.* [SEAL.]

STATE OF ILLINOIS,
McLean County:

I, E. H. Rood, clerk of the county court in and for said county and State aforesaid, do hereby certify that Z. Lawrence, esq., whose
82 genuine signature appears to the foregoing certificate, was at the time of signing the same an acting justice of the peace in and for said county, duly commissioned and qualified to his said office, as appears to me of record.

Witness my hand this eighteenth day of June, A. D. 1855, the seal of said court being hereto affixed.

E. H. ROOD, *Clerk.*
Per N. G. BLAINE, *Dep'ty.*

Filed June 19th, 18th, 1855.

EXHIBIT No. 5.

(Copy.)

This indenture, made this fourteenth day of May, in the year of our Lord one thousand eight*een* hundred and fifty-five, between Richard P. Morgan & Mary E. Morgan, his wife, of the county of McLean and State of Illinois, of the first part, & Jesse W. Fell, of the county of McLean and State of Illinois, of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of one hundred dollars to them paid, the receipt whereof is hereby acknowledged, do grant, bargain, sell, and convey, and confirm unto the said party of the second part, and to his heirs and assigns, certain tract or parcel of land, with the appurtenance', lying & being in the county of Livingston and State of Illinois, described as follows, to wit:
83 Lots one, two, three, four, five, six, seven, the north half of lots fifteen, sixteen, and seventeen; all of lots eighteen, nineteen, twenty, twenty-one, and twenty-two, in block four; lots one, two, three, twenty-three, twenty-four, twenty-five, of block five; lots six, seven, eight, and twenty-one, of block six; lots five and six, block seven; lots one, two, three, and four, of block eight; lots seven, seventeen, and eighteen, block ten; lots ten and eleven, block eleven; lot twenty, block twelve; lots four, five, six, & seventeen, block thirteen; lots five, twelve, thirteen, twenty-two, and twenty-three, of block fourteen; lots one and four, block fifteen; lot two, of block seventeen; lots three, twelve, and thirteen, of block nineteen; lots five, six, & seventeen, of block twenty; lots five, six, twenty-four, twenty-five, and twenty-eight, of block twenty-two; lots one, twenty-three, and twenty-four, of block twenty-three;

all in the town of Dwight, of said county of Livingston: To have and to hold the above-granted premises to the said party of the second part, his heirs and assigns, and him and his use and behoof forever; and the said party of the first part do hereby, for themselves and their heirs, executors, and administrators, covenant with the said party of the second part, his heirs and assigns, that they are lawfully seized in fee-simple of the above-granted premises; that they are free from all incumbrances; that they have good right to sell and convey the same to the said party of the second part, and that they and their heirs, ex-
84 ecutors, and administrators will warrant and defend the said tract or parcel of land to the said party of the second part, his heirs and assigns, forever, against the lawful claims of all persons.

In witness whereof the said party of the first part have hereunto set their hands and seals *this* on the day and year above written.

RICHARD P. MORGAN. [L. S.]
MARY E. MORGAN. [L. S.]

Signed, sealed, and delivered in presence of—
Z. LAWRENCE.

STATE OF ILLINOIS,
McLean County:

I, Z. Lawrence, an acting justice of the peace in and for said county, do hereby certify that the above Richard P. Morgan and Mary E. Morgan, his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same, this day in their proper persons came before me and acknowledged that they signed, sealed, and delivered said deed for the use and purposes therein mentioned; and the said Mary E. Morgan, wife of the said Richard P. Morgan, having been fully acquainted with the contents of said deed, and by me examined separate and apart from her said husband, declared that she signed and acknowledged said deed and relinquished her dower in and to the lands thereby conveyed freely, voluntarily, and
85 without compulsion of her said husband.

In witness whereof I have set my hand and seal this fourteenth day of May, A. D. 1855.

Filed 3d July, '55.

EXHIBIT No. 6.

(Copy.)

Richard P. Morgan and wife to Kersey H. Fell.— Warrantee deed.

This indenture, made this fourteenth day of May, in the year of our Lord eighteen hundred and fifty-five, between Richard P. Morgan and Mary E. Morgan, his wife, of the county of McLean and State of Illinois, of the first part, and Kersey H. Fell, of the county of McLean and State of Illinois, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one hundred dollars to them paid, the receipt whereof is hereby acknowledged, do grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns, certain tract or parcels of land, with the appurtenances, lying and being in the county of Livingston and State of Illinois, described as follows, to wit: Lots one, two, and three, of block one; lots eight, nine, ten, eleven, twelve,

thirteen, fourteen, twenty-three, twenty-four, twenty-five, twenty-
86 six, twenty-eight, of block four; lots four, five, six, seven, twenty-six, twenty-seven, and twenty-eight, of block five; lots eighteen, nineteen, and twenty, of block six; lots five and six, of block eight; lot eight, nineteen, and twenty, of block ten; lot nine, of block eleven; lots one, two, three, and seven, of block thirteen; lots six, ten, eleven, twenty, and twenty-one, of block fourteen; lot six, of block fifteen; lot three, of block seventeen; lot four, of block eighteen; lots one, eighteen, and nineteen, of block nineteen; lots eighteen, nineteen, and twenty, of block twenty; lots seven, eight, fifteen, and sixteen, of block twenty-two; lots two, twenty-one, and twenty-two, of block twenty-three, and lot four, of block twenty-four: To have and to hold the aforesaid-granted premises to the said party of the second part, his heirs and assigns, to them and their use and behoof forever. And the said parties of the first part do hereby, for themselves and their heirs, executors, and administrators, covenant with the said party of the second *party of the second* part, his heirs and assigns, that they are lawfully seized in fee-simple of the above-granted premises; that they are free from all incumbrances; that they have good right to sell and convey the same to the said party of the second part, and that they and their heirs, executors, and administrators will warrant and defend the said tracts *of* parcels of land to the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all persons.

87 In witness whereof the said parties of the first part have hereunto set their hands and seals on the day and year first above written.

RICH. P. MORGAN, J'R. [SEAL.]
MARY E. MORGAN. [SEAL.]

Signed, sealed, and delivered in presence of—
Z. LAWRENCE.

STATE OF ILLINOIS,
McLean County:

I, Z. Lawrence, an acting justice of the peace in and for said county, do hereby certify that the above-named Richard P. Morgan, j'r, and Mary E. Morgan, his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same, this day, in their proper persons, came before me and acknowledged that they signed, sealed, and delivered the said deed for the uses and purposes therein mentioned. And the said Mary E. Morgan, wife of the said Richard P. Morgan, j'r, having been made fully acquainted with the contents of said deed, and by me examined separate and apart from her said husband, *and* declared that she signed and acknowledged said deed, and relinquished her dower in and to the lands thereby conveyed, freely, voluntarily, and without compulsion of her said husband.

88 In testimony whereof I have hereunto set my hand and seal this fourteenth day of May, A. D. 1855.

Z. LAWRENCE, *J. P.* [L. S.]

AUG. 30.

EXHIBIT No. 7.

This agreement, made and entered into this first day of July, A. D. 1864, by and between the Chicago and Alton Railroad Company, party of the first part, and Joseph McPherson, of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to said party of the first part paid by said second party, and the covenants and agreements hereinafter contained on the part of said second party to be kept and performed, hereby grants unto the said second party the right to erect upon such portion of any land belonging to said first party otherwise unoccupied as may be selected and designated by the superintendent of the railroad of said first party, at or near the station of Dwight, in the county of Livingston, a warehouse suitable and proper for the reception, storage, and shipment of grain at said station; and said first party further covenants to and
89 with said second party that said second party shall have the right to occupy and use such portion of land, selected and designated as aforesaid, for the location of said warehouse for and during the full term of twenty years from the date of this agreement, free of payment of rent therefor, unless the occupancy of said premises shall be sooner terminated in the manner hereinafter provided.

And in consideration of the covenants hereinafter contained on behalf of said second party, the said first party hereby covenants and agrees to and with said second party that it, the said first party, will at all times hereafter transport all grain in bulk which may be to said first party delivered by said second party at said warehouse, upon the cars of said first party, as hereinafter specified, in quantities not less than one full car-load at one time, to other stations upon its railroad, at a rate which shall be less by one cent per 100 pounds for grain in bulk than the regular tariff price of said first party, or than the charges made by said first party to transient shippers who deliver grain to said first party from wagons or otherwise.

And said party of the second part, in consideration of the covenants herein contained on behalf of the first party, and the right herein granted by said first party, hereby covenants and agrees that he will, within ninety days from the execution of this agreement, at his
90 own proper cost and expense, erect upon the said portion of ground, selected and designated as aforesaid, at the said station of Dwight, a good and substantial warehouse and elevator, of the capacity to contain from sixty to one hundred thousand bushels of grain, with one or more elevators, and all the appurtenances, suitable and proper for speedily elevating and delivering grain upon the cars of said first party by means of spouts or sluices. And the said second party hereby further agrees with the said first party that he, the said second party, will at all times hereafter, without delay, when the cars of said first party are furnished for that purpose, load all such cars immediately upon the arrival of said cars at such station, and that he, the said second party, will load said cars without delay, whether the said cars be received at said station in the night or in the day time.

And said second party hereby further agrees that he will charge for storage and delivery of grain from said warehouse only reasonable and compensatory commissions.

And said second party hereby further agrees to and with said first party, that said first party shall in no case be held pecuniarily liable for damage to said warehouse, or to the contents thereof, by fire from any cause; and that he, the said party of the second part, will at all times hereafter, during the continuance of this agreement, receive grain, goods, wares, and merchandise, from persons who desire to store
91 said goods in said warehouse, or to use said warehouse for the purpose of delivering said grain and goods upon the cars of the party of the first part, subject to the following stipulation, to be signed

by the person storing said goods or delivering said grain at said warehouse, and duly stamped in accordance with the provisions of the United States revenue laws, viz: "In consideration of the facility for storage and delivery of grain and other goods afforded by the Chicago and Alton Railroad Company, by means of the warehouse erected in pursuance of the terms of its contract with Joseph McPherson, I hereby agree that said railroad company shall in no case be held liable for any loss or damage which may be occasioned to the goods, grain, wares, or merchandize stored in the warehouse of said Joseph McPherson, at Dwight Station, by means of fire from any cause whatever."

And it is hereby mutually agreed between the parties hereto that in case said warehouse shall, at any time during the continuance of this agreement, be destroyed by fire this contract shall not cease and determine by reason thereof, but the said second party shall be allowed one hundred & eighty days within which to rebuild the same; and in case the said warehouse shall not be, by said second party, rebuilt in all respects equal to the one so destroyed within one hundred and eighty days from the time of its destruction by fire, then this
92 contract shall cease and determine and be no longer binding upon the parties hereto.

And it is expressly understood between the parties hereto that, at the expiration of the time mentioned for the continuance of the right herein granted to the second party, the said second party shall have the right to remove said warehouse from said premises, at his own expense, and he shall have a reasonable time for making such removal.

And the said second party hereby agrees that he will not sublet said warehouse, nor assign nor transfer this agreement, without the consent, in writing, of the superintendent of the party of the first part, and that he will use said building for no other purpose than that contemplated by the terms of this contract.

And it is distinctly understood and agreed between the parties hereto that, in case the said second party shall make default in any of the covenants herein contained on his part to be kept and performed, then and in that case it shall and may be lawful for said first party, its assigns, successors, agent or attorney, at its election, to declare this agreement at an end, and into and upon said premises or any part thereof to re-enter, with or without process of law, and the said party of the second part or any person or persons occupying said premises to expel, remove, and put out, using such force as may be necessary for that purpose, and the said premises again to repossess and enjoy in its first and former estate.

93 In witness whereof the parties hereto have executed this agreement in duplicate, each being an original; and the said party of the first part hath caused its president to subscribe his name hereto, and hath caused its corporate seal to be attached hereto; and said second party hath hereto subscribed his name and affixed his seal the day and year first above written.

THE CHICAGO & ALTON RAILROAD COMPANY, [L. S.]
By T. B. BLACKSTONE, *Pres't.* [SEAL.]
JOSEPH McPHERSON. [SEAL.]

J. C. McMULLIN, *Witness.*

[U. S. stamp, 5 c., cancelled.] [U. S. stamp, $1.00, cancelled.]

The ground to be occupied, for the purposes herein named, is described as follows: Commencing at a point thirty-two feet east from the centre

of the main track and ten feet south of the north line of the park on the west side of the main track, and south of the depot building, and running south one hundred and fifty feet, and east to the line of the company's right of way.

Location approved.

ROB'T HALE,
Gen'l Sup't.

94 EXHIBIT No. 8.

This agreement, made and entered into this twelfth day of September, A. D. 1866, by and between the Chicago and Alton Railroad Company, party of the first part, and John B. Campbell, of the town of Dwight, in the county of Livingston and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to said party of the first part paid by said second party, and the covenants and agreements hereinafter contained on the part of said second party to be kept and performed, hereby grants unto the said second party the right to erect upon such portion of any land belonging to said first party, otherwise unoccupied, as may be selected and designated by the superintendent of the railroad of said first party, at or near the station of Dwight, in the county of Livingston, a warehouse suitable and proper for the reception, storage, and shipment of grain at said station.

And said first party further covenants to and with said second party that said second party shall have the right to occupy and use such portion of land, selected and designated as aforesaid, for the location of said warehouse, for and during the full term of ten years from the date of this agreement, free of payment of rent therefor, unless the occupancy of said premises shall be sooner terminated in the manner hereinafter provided.

95 And in consideration of the covenants hereinafter contained on behalf of said second party, the said first party hereby covenants and agrees to and with said second party that it, the said first party, will, at all times hereafter, transport all grain in bulk which may be to said first party delivered by said second party at said warehouse upon the cars of said first party, as hereinafter specified, in quantities not less than one full car-load at one time, to other stations upon its railroad, at a rate which shall be less by one cent per 100 pounds for grain in bulk than the regular tariff-price of said first party, or than the charges made by said first party to transient shippers who deliver grain to said first party from wagons or otherwise.

And said party of the second part, in consideration of the covenants herein contained on behalf of the first party, and the right herein granted by said first party, hereby covenants and agrees that he will, within four months from the execution of this agreement, at his own proper cost and expense, erect upon the said portion of ground selected and designated as aforesaid, at the said station of Dwight, a good and substantial warehouse and elevator of at least twenty-four feet by forty-eight feet in size, with one or more elevators, and all the appurtenances, suitable and proper for speedily elevating and delivering grain upon the cars of said first party by means of spouts or sluices.

96 And the said second party hereby further agrees with the said first party that he, the said second party, will at all times hereafter, without delay, when the cars of said first party are furnished for that purpose at his request, load all such cars immediately upon the

arrival of said cars at such station, and that he, the said second party, will load said cars without delay, whether the said cars be received at said station in the night or in the day time.

And said second party hereby further agrees that he will charge for storage and delivery of grain from said warehouse only reasonable and compensatory commissions.

And said second party hereby further agrees to and with said first party that said first party shall in no case be held pecuniarily liable for damage to said warehouse, or to the contents thereof, by fire from any cause, and that he, the said party of the second part, will at all times hereafter, during the continuance of this agreement, receive no grain, goods, wares, and merchandise from any persons who desire to store said goods in said warehouse, or to use said warehouse for the purpose of delivering said grain and goods upon the cars of the party of the first part, unless the same are subject to the following stipulation, to be signed by the person storing said goods or delivering said grain at said warehouse, and duly stamped in accordance with the provisions of the United States revenue laws, viz: "In consideration of the facility for storage and delivery of grain and other goods afforded by
97 the Chicago and Alton Railroad Company by means of the warehouse erected in pursuance of the terms of its contract with John B. Campbell, I hereby agree that said railroad company shall in no case be held liable for any loss or damage which may be occasioned to the goods, grain, wares, and merchandize stored in the warehouse of said John B. Campbell, at Dwight Station, by means of fire from any cause whatever."

And it is hereby mutually agreed between the parties hereto that in case said warehouse shall at any time during the continuance of this agreement be destroyed by fire this contract shall not cease and determine by reason thereof, but the said second party shall be allowed six months within which to rebuild the same, and in case the said warehouse shall not be, by said second party, rebuilt in all respects equal to the one so destroyed, within six months from the time of its destruction by fire, then this contract shall cease and determine, and be no longer binding upon the parties hereto.

And it is expressly understood between the parties hereto that, at the expiration of the time mentioned for the continuance of the right herein granted to the second party, the said second party shall have the right to remove said warehouse from said premises at his own expense, and he shall have a reasonable time for making such removal.

98 And the said second party hereby agrees that he will not sublet said warehouse, nor assign nor transfer this agreement, without the consent in writing of the superintendent of the party of the first part, and that he will use said building for no other purpose than that contemplated by the terms of this contract.

And it is distinctly understood and agreed between the parties hereto that in case the said second party shall make default in any of the covenants herein contained on his part to be kept and performed, then and in that case it shall and may be lawful for said first party, its assigns, successors, agent, or attorney, at its election, to declare this agreement at an end, and into and upon said premises or any part thereof to re-enter with or without process of law, and the said party of the second part or any person or persons occupying said premises to expel, remove, and put out, using such force as may be necessary for that purpose, and the said premises again to repossess and enjoy in its first and former estate.

In witness whereof the parties hereto have executed this agreement in duplicate, each being an original; and the said party of the first part hath caused its president to subscribe his name hereto, and hath caused its corporate seal to be attached hereto; and said second party hath hereto subscribed his name and affixed his seal the day and year first above written.

99 THE CHICAGO & ALTON RAILROAD COMPANY, [L. S.]
By T. B. BLACKSTONE, *Pres't.* [SEAL.]
JOHN B. CAMPBELL. [SEAL.]

Attest:
W. M. LARRABEE, *Secretary.*

[U. S. stamp, 5c., cancelled.] [U. S. stamp, 50c., cancelled.]

The piece of ground designated by me, in pursuance of the provisions of the foregoing agreement, is thus described: Commencing at a point in the south line of the cattle-shute, as now located at Dwight, easterly, at right angles from the centre of the main track of the Chicago and Alton Railroad, and thirty-two feet distant therefrom; thence southerly, parallel with said main track, one hundred feet; thence easterly, at right angles to said main track, sixty-eight feet, to the line of the street; thence northerly, along the line of the street, one hundred feet; thence westerly to the place of beginning; which location is designated on a map attached to this agreement.

Chicago, September 12th, 1866.

ROB'T HALE,
Gen'l Sup't.

100 EXHIBIT No. 9.

This agreement, made and entered into this second day of January, A. D. 1868, by and between the Chicago and Alton Railroad Company, party of the first part, and James G. Strong and Charles L. Newell, of Dwight, in the county of Livingston and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to said party of the first part paid by said second parties, and the covenants and agreements hereinafter contained on the part of said second party to be kept and performed, hereby grants unto the said second parties the right to erect upon such portion of any land belonging to said first party, otherwise unoccupied, as may be selected and designated by the superintendent of the railroad of said first party, at or near the station of Dwight, in the county of Livingston, a warehouse suitable and proper for the reception, storage, and shipment of grain at said station.

And said first party further covenants to and with said second parties that said second parties shall have the right to occupy and use such portion of land, selected and designated as aforesaid, for the location of said warehouse, for and during the full term of twenty years from the date of this agreement, free of payment of rent therefor, unless the
101 occupancy of said premises shall be sooner terminated in the manner hereinafter provided.

And in considerat on of the covenants hereinafter contained on behalf of said second parties, the said first party hereby covenants and agrees to and with said second party that it, the said first party, will, at all times hereafter, transport all grain in bulk which may be to said first party delivered by said second party, at said warehouse, upon the cars of said first party, as hereinafter specified, in quantities not less than

one full car-load at one time, to other stations upon its railroad, at a rate which shall be less by one cent per 100 pounds for grain in bulk than the regular tariff-price of said first party or than the charges made by said first party to transient shippers who deliver grain to said first party from wagons or otherwise.

And said parties of the second part, in consideration of the covenants herein contained on behalf of the first party and the right herein granted by said first party, hereby covenant and agree that they will, within six months from the execution of this agreement, at their own proper cost and expense, erect upon the said portion of ground selected and designated as aforesaid, at the said station of Dwight, a good and substantial warehouse and elevator, of the capacity to contain bushels of grain, with one or more elevators and all the appurtenances suitable and proper for speedily elevating and delivering grain upon the cars of said first party by means of spouts or sluices.

102 And the said second parties hereby further agree with the said first party that he, the said second parties, will at all times hereafter, without delay, when the cars of said first party are furnished for that purpose at their request, load all such cars immediately upon the arrival of said cars at such station, and that they, the said second parties, will load said cars without delay, whether the said cars be received at said station in the night or in the day time.

And said second party hereby further agrees that he will charge for storage and delivery of grain from said warehouse only reasonable and compensatory commissions, and such as may be charged for like services at other warehouses of similar character along the line of the railroad of said first party.

And said second parties hereby further agree to and with said first party that said first party shall in no case be held pecuniarily liable for damage to said warehouse, or to the contents thereof, by fire from any cause, and that they, the said parties of the second part, will at all times hereafter, during the continuance of this agreement, receive no grain, goods, wares, or merchandise from any persons who desire to store said goods in said warehouse, or to use said warehouse for the purpose of delivering said grain and goods upon the cars of the party of the first part, unless the same are subject to the following stipulation, to be signed by

103 the person storing said goods or delivering said grain at said warehouse, and duly stamped in accordance with the provisions of the United States revenue laws, viz: "In consideration of the facility for storage and delivery of grain and other goods afforded by the Chicago and Alton Railroad Company by means of the warehouse erected in pursuance of the terms of its contract with James G. Strong & Charles L. Newell, I hereby agree that said railroad company shall in no case be held liable for any loss or damage which may be occasioned to the goods, grain, wares, or merchandize stored in the warehouse of said Strong & Newell at Dwight Station, by means of fire from any cause whatever."

And it is hereby mutually agreed between the parties hereto that, in case said warehouse shall at any time during the continuance of this agreement be destroyed by fire, this contract shall not cease and determine by reason thereof, but the said second party shall be allowed ninety days within which to rebuild the same; and in case the said warehouse shall not be by said second party rebuilt in all respects equal to the one so destroyed within ninety days from the time of its destruction by fire, then this contract shall cease and determine, and be no longer binding upon the parties hereto. And it is expressly understood between the parties hereto that, at the expiration of the time mentioned for the con-

tinuance of the right herein granted to the second partys, the said
104 second partys shall have the right to remove said warehouse from said premises at his own expense, and he shall have a reasonable time for making such removal.

And the said second partys hereby agree that they will not sublet said warehouse, nor assign nor transfer this agreement, without the consent in writing of the superintendent of the party of the first part, and that they will use said building for no other purpose than that contemplated by the terms of this contract.

And it is distinctly understood and agreed between the parties hereto that, in case the said second partys shall make default in any of the covenants herein contained on their part to be kept and performed, then and in that case it shall and may be lawful for said first party, its assigns, successors, agent, or attorney, at its election, to declare this agreement at an end, and into and upon said premises, or any part thereof, to re-enter with or without process of law; and the said party of the second part, or any person or persons occupying said premises, to expel, remove, and put out, using such force as may be necessary for that purpose, and the said premises again to repossess and enjoy in its first and former estate.

In witness whereof the parties hereto have executed this agreement in duplicate, each being an original, and the said party of the first part hath caused its president to subscribe his name hereto, and hath
105 caused its corporate seal to be attached hereto, and said second party hath hereto subscribed his name and affixed his seal the day and year first above written.

THE CHICAGO & ALTON RAILROAD COMPANY, [L. S.]
By T. B. BLACKSTONE, *Pres't.* [SEAL.]
JAMES G. STRONG.
CHA'S S. NEWELL. [SEAL.]

Attest:
W. M. LARRABEE, *Secretary.*

[U. S. stamp, 50c., cancelled.]

The land mentioned in the foregoing instrument consists of two pieces, and they are thus described: Beginning at a point three hundred and nineteen feet south along the center line of the Chicago and Alton Railroad Company from the south line of Franklin street, and east at right angles with said center line thirty-three and one-half feet; thence for the north boundary-line east at right angles to said center line to the eastern boundary of the land owned by the Chicago and Alton Railroad Company; thence along the eastern boundary-line of the land owned by said railroad company fifty seven feet; thence west, at right angles to a point which shall be thirty-three and one-half feet distant from the center of the main track of said railroad; thence north, parallel with the eastern boundary-line of said company's land, to the place of beginning. Also, commencing four hundred and seventy-six feet measured along the center line of the main track of said
106 road, and thirty-three and one-half distant at right angles from it; thence east, at right angles to main track to the east line of said company's land; thence south along said east line twenty-eight feet; thence west, at right angles to a point thirty-three and one-half feet from center of main track; thence north to place of beginning; the warehouse to be located on first-mentioned track.

T. B. BLACKSTONE,
Gen. Sup't.

EXHIBIT No. 10.

Know all men by these presents that I, Richard P. Morgan, j'r, of the town of Dwight, county of Livingston, and State of Illinois, and held and firmly bound unto the Chicago and Alton Railroad Company in the sum of five thousand dollars, lawful money of the United States, for the true payment of which I bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with my seal, and dated this 9th day of October, A. D. 1867.

The condition of the above bond is such that, if the above-bounden Richard P. Morgan, j'r, shall well and truly submit to the decision and award of Hon. David Davis and Hon. Thomas Drummond, named and chosen as arbitrators, as well by and on the part and behalf of
107 the said Richard P. Morgan, j'r, as of the said The Chicago and Alton Railroad Company, to arbitrate, award, order, judge, and determine of and concerning certain controversies and disputes touching the rights of said parties in and to certain pieces of land in the town of Dwight, specified in the agreement of arbitration, so that the said award be made in writing, under the hands of said arbitrators, and ready to be delivered to said parties on or before the first day of January, A. D. 1868, then this obligation to be void; else to remain in full force and virtue.

RICH'D P. MORGAN, J'R. [L. S.]

Signed, sealed, & delivered in presence of—

[U. S. stamp, 25 c'ts, cancelled.]

Whereas divers differences and disputes have arisen between Richard P. Morgan, j'r, of the town of Dwight, county of Livingston, and State of Illinois, and the Chicago and Alton Railroad Company, as to their several and respective rights, claims, and interests in and to two certain pieces or parcels of land lying, situate, and being in the town of Dwight and county of Livingston, in the State of Illinois, more particularly described in the agreed statement of facts to this instrument annexed, and they have severally and respectively agreed to submit the
108 same to the arbitrament and final determination *on* Hon. David Davis and Hon. Thomas Drummond, and that their award shall be final and conclusive, both at law and in equity, as well on the part and behalf of the above-named Richard P. Morgan, j'r, his heirs, executors, and administrators, as on the part and behalf of the above-named The Chicago and Alton Railroad Company, its successors and assigns: Now, for the putting an end to said controversy, and the amicable settlement of said differences and disputes, and for divers other considerations them thereunto moving, it is hereby mutually agreed between the said Richard P. Morgan, j'r, and the Chicago and Alton Railroad Company, to refer all questions touching said pieces of land to the award, arbitrament, and determination of Hon. David Davis and Hon. Thomas Drummond, arbitrators indifferently named and chosen by the said parties hereto; and it is hereby expressly agreed that the said arbitrators shall decide the questions at issue between the parties aforesaid upon the agreed statement of facts annexed to this agreement, and that their decision and award, when made, shall be final and conclusive upon each of the parties hereto.

And the said parties do hereby severally and respectively agree well and truly to stand to, perform, abide by, and keep the award, arbitrament, and determination of the said arbitrators touching the several

109 matters hereinbefore mentioned, so as the said award be made in writing under the hands of said arbitrators.

In witness whereof the said parties have executed this agreement in duplicate, and the said Richard P. Morgan has hereto set his hand and seal, and the Chicago and Alton Railroad Company have caused their president to subscribe the same, and their common and corporate seal to be attached hereto, on this ninth day of October, A. D. 1867.

RICH'D P. MORGAN, J'R. [SEAL.]
THE CHICAGO & ALTON R. R. CO., [SEAL.]
By T. B. BLACKSTONE, *Pres't.*

Attest:
W. M. LARRABEE, *Secretary.*

Statement of facts agreed upon by the parties to foregoing submission and therein referred to.

On and before the 6th of August, 1853, said Richard P. Morgan, jun'r, was the owner, under a patent from the United States, of the northeast quarter of section No. 9, township thirty north, range seven east, of 3d p. m., in fee-simple. On said 6th of August, 1853, said Morgan executed and delivered to the Chicago and Miss. Railroad Company a deed
110 of which a copy is annexed hereto, marked "No. 1," and said company took possession of the land in said deed described, and constructed their railroad thereon, and also erected a depot on the said land described in the northeast quarter of section nine, (9.) On the thirtieth of January, 1854, said Morgan caused a plat of the town of Dwight to be laid out, which was afterwards duly recorded; a copy of so much of the map as relates to the premises in dispute, and also of the papers laying out and recording said plat, is hereto annexed and marked "No. 2." Since the recording of the said plat no taxes have been paid by either party on the two strips in question, each fifty feet wide, included in the grounds marked on said map with the word "Depot," and lying on each side of the one hundred feet in said section number nine, described in the said deed of the 6th of August, 1853. The crossings mentioned in said deed of August 1853, were not constructed until 1867, except one at the north end of the grounds marked "Depot."

That the Chicago and Alton Railroad Company have a track or tracks on the westerly strip of land since some time in 1863, and that the two strips have been unenclosed and portions of them used by the public for purposes connected with railroad traffic, while other portions of the
111 easterly strip have been occupied by buildings without the consent or authority of Morgan thereto, and in one case under a license granted by the superintendent of said railroad company for a grain elevator or warehouse.

It is conceded that the Chicago and Alton Railroad Company succeeded to all rights which the Chicago and Miss. Railroad Company and its successors may have had in the premises.

The Chicago and Alton Railroad Company now claim that the record made by Morgan in January, 1854, was a dedication of the two strips of fifty feet each, lying on either side of the one hundred feet, deeded by him (Morgan) to the railroad company on the 6th of August, 1853, and claim the right to occupy and use the same for depot purposes in common with the public.

Morgan claims that his map and record of January, 1854, do not constitute a dedication of either of the fifty feet strips.

RICH'D P. MORGAN, J'R.
THE CHICAGO & ALTON R. R. CO.,
By T. B. BLACKSTONE, *Pres't.*

112 No. 1.

This Indenture, made this 6th day of August, in the year of our Lord one thousand eight hundred and fifty-three, between Richard P. Morgan, j'r, of the first part, and the Chicago and Mississippi Railroad Company, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants of the party of the second part hereinafter mentioned, and the sum of one dollar paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and conveyed, and by these presents do grant, bargain, sell, release, and convey, to the said party of the second part, their successors and assigns, forever, all those certain pieces or parcels of land situated, lying, and being in the county of Livingston, Illinois, and known, designated, and described as follows, to wit: All the land lying within a distance of fifty feet in width on each side of the centre line of said company's railroad as said center line runs through or across the following tracts of land, to wit: the northeast quarter of section nine (9) in township thirty (30) north, of range seven east of the 3d P. M.; also the southeast quarter of section eighteen (18) in township and range aforesaid; together with all the privileges and appurtenances to the said land in any wise
113 appertaining and belonging: To have and to hold the above-granted premises to the said party of the second part, their successors and assigns, to their use and behoof forever, subject to the following covenants of the said party of the second part, to wit, said company agree to keep up perpetually good and sufficient fences on either side of said road, so far as the same runs through or across either of said tracts, whenever the same is reduced to cultivation; said company also agree to construct and keep up, on the last-mentioned track, the necessary crossings for the use of said land, not exceeding in number; and should the former tract be laid off into town-lots, to make safe and substantial crossings wherever the line of said road intersects the streets that may be laid out on said land; said company further agree, in consideration of the premises, to erect and keep up station-houses and other necessary depot buildings on said first-mentioned tract, and also at the town of Pontiac, of said county.

In testimony whereof the party of the first part have hereunto set his hand and seal the day and year first above written.

RICHARD P. MORGAN, J'R. [SEAL.]

Duly acknowledged by grantor Aug. 6th, 1853, and recorded Sept. 29th, 1853, in Livingston County.

114 No. 2.

STATE OF ILLINOIS,
Livingston County, ss:

I, James W. Renwick, clerk of the circuit court, and ex-officio recorder of deeds, mortgages, and other instruments of writing, in and for the county of Livingston and State aforesaid, do hereby certify that the above is a true and correct copy of the original plat of portion the town of Dwight bounded by the streets therein named, as the same appears of record in my office.

Given under my hand this 13th March, 1867.

JAMES RENWICK,
Clerk.

Know all men by these presents that I, Richard P. Morgan, j'r, of McLean County, State of Illinois do, in conformity with the laws of said State, lay off the southwest quarter of the southeast quarter of section 4, also the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter of section 9, all of township 30 north, range seven east of the 3d principal M., into blocks, lots, streets, and alleys, as exhibited on the annexed plat, and as particularly described in the annexed certificate of survey signed by Amos Edwards, county surveyor of Livingston County, Illinois, to be known as the town of Dwight, and the streets and alleys as therein described are
115 hereby donated to the public.

In witness whereof I have hereunto set my hand and seal this 30th day of January, A. D. 1854.

RICHARD P. MORGAN, J'R. [SEAL.]

This certifies that I, Amos Edwards, have surveyed for Richard P. Morgan, jun'r, the southwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of section 4, also the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter of section 9, all of township 30 north, range 7 east, of the 3rd P. M., into lots, blocks, streets, and alleys, according to the annexed plat, except blocks 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 20, and 21, which are duly laid off into blocks, and called the town of Dwight; the width of the streets and alleys, and the width and length of the blocks, is marked on the plat in figures representing feet; at the southeast corner of block 11 a stone is planted from which to make further surveys.

November 17, 1853.

AMOS EDWARDS,
County Surveyor, Livingston County, Illinois,
By NELSON BUCK,
Dep. C. S.

Deed acknowledged by M'r Morgan the 30th Jan'y, 1854, before
IRA SANTYS,
J. P., Livingston Co.

Plat approved and authorized to be admitted to record 1st day of February, 1854, by Billings P. Babcock, judge, and John Darnall
116 and Eli Myer, associate justices in and for the county of Livingston.

Certified by James Renwick, clerk circuit court, to be true copy of the original dedication of the town of Dwight, by Richard P. Morgan, jun'r, as recorded in his office.

Dated March 13th, A. D. 1867.

We have considered the question submitted to us by the parties in this case, upon the agreed statement of facts and the arguments of counsel, and are of opinion that the grant made by M'r Morgan of the right of way to the railroad company in 1853, and the survey, platting, and recording of the town of Dwight in 1854, the running of streets along the disputed strips of land, and the laying off of lots abutting on the same and fronting on the railway in the manner set forth in the said plat and record, together with the conduct of M'r Morgan touching the said strips of land since the year 1854, do constitute a dedication of the same to the public. We give no opinion as to the manner in which the

two strips of land can be used, whether by the railway company or by the public.

THOMAS DRUMMOND.
DAVID DAVIS.

CHICAGO, *Dec'r* 1, 1868.

(Endorsed:) Filed May 23d, 1873. W'm H. Bradley, cl'k.

117 *Answer of Richard P. Morgan, j'r, to the amended bill of complaint of Robert P. Tansey, filed herein.*

UNITED STATES OF AMERICA,
State of Illinois:

In the circuit court of the United States for the northern district of Illinois. In chancery.

ROBERT P. TANSEY
vs.
RICHARD P. MORGAN, J'R, THE CHICAGO AND Alton R. R. Co., Jesse W. Fell, Kersey H. Fell, James Morgan, Charles L. Newell, and John B. Campbell.

The several answer of Richard P. Morgan, j'r, one of the defendants, to the amended bill of Robert P. Tansey, in the case of Robert P. Tansey vs. Richard P. Morgan, j'r, et al.

This defendant, now and at all times hereafter saving and reserving to himself all benefit of advantage of exception or otherwise which may or can be had or taken to the many errors, uncertainties, and other imperfections in the said bill as amended contained, for answer thereunto, or unto so much thereof and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says:

118 That he admits that heretofore, to wit, on the 6th day of August, 1853, the Chicago and Mississippi Railroad Company was a corporation created by and organized under the laws of the State of Illinois, with authority to locate, lay out and construct, maintain and operate, a railway in said State from Alton to Joliet. That afterward, to wit, the 14th day of Feb., 1855, the name of said corporation was changed to that of the Chicago, Alton and S't Louis Railroad Company, and that afterward, to wit, on the 15th day of October, 1862, the Chicago and Alton Railroad Company acquired and succeeded to and is now in possession of certain rights, powers, privileges, immunities, and properties of the said Chicago, Alton and S't Louis Railroad Company, but what particular rights, privileges, immunities, and properties this defendant has not been informed and does not know, and leaves the said complainant to make the proper proof thereof to the satisfaction of this honorable court.

This defendant further admits that the said Chicago and Mississippi Railroad Company did, prior to the 6th day of August, 1853, locate and lay out the railway which the said company was authorized to build as aforesaid across the northwest quarter of the northeast quarter of section nine, in township thirty north of range seven east of the 3rd P. M., now forming part of the town of Dwight, in the county of Livingston, in said State, and shortly thereafter constructed the said railway as lo-

cated and laid out, which said railway, so located and constructed,
119 and all of its appendages, are now the property of and are used and operated by the said Chicago & Alton Railway Company; but this defendant denies that Exhibit No. 1 to said complainant's amended bill attached is a correct copy of said railway and appendages as they now exist.

This defendant admits that prior to the time of the location of the said railway through the said northwest quarter of the northeast quarter of said section nine, as aforesaid, this defendant and the said James C. Spencer were civil engineers in the employ of the said Chicago and Mississippi Railroad Company, and that it was a part of their duy to survey and lay out the line of said railway, but this defendant denies that they had anything to do with locating the same. That the same was located by the chief engineer, Oliver H. Lee. Nor did this defendant have anything to say or do about surveying, locating, or laying out said line of railway across the land above described, being then located at Bloomington, and his charge did not extend north of that point, neither did he nor the said James C. Spencer, in pursuance of their duties, have anything to do with procuring for the company the necessary right of way, depot grounds and appurtenances, but that certain other persons were employed especially for that purpose.

This defendant says that he and the said James C. Spencer, by reason of their employment, had knowledge in advance of the public relative to the location and laying out of the line of said railway, and of the
120 depots along and upon the same, and concerning the profits likely to result from the laying out of towns upon the said line and adjacent to said depots, but denies that there was any agreement between the railroad company and themselves to protect the said company or its interest in purchasing lands, and, on the contrary, says that said company placed no restrictions whatever upon them buying or purchasing lands along said line wherever their judgment should dictate.

This defendant further admits that at the time of the location of said line of railway over the premises aforesaid Jesse W. Fell, Kersey H. Fell, and one John Lathrop were friends of the said James C. Spencer and this defendant, and that all the said parties desired to avail themselves of the advantages offered for purchasing lands along the line of said railway; but this defendant denies that he or the said James C. Spencer had any knowledge of the location of depots and laying out of towns which the said Jesse W. Fell, Kersey H. Fell, and John Lathrop were not also acquainted with from their business and connection with said railroad.

This defendant also admits that, prior to the 6th day of August, 1853, he entered at the land-office of the United States the northwest quarter of the northeast quarter of section nine, township thirty, range seven east of the 3rd P. M., and that afterwards, to wit, on the 4th day of August, 1853, received from the United States a patent therefor, and that the said Jesse W. Fell and Kersey H. Fell, prior to the 6th day of August, 1853, entered at the land-office of the United States the
121 northeast quarter of the northwest quarter of section nine, in the same township and range, and afterwards, to wit, on the 4th day of August, 1853, received a patent therefor. That the said James C. Spencer, a short time prior to the 6th day of August, 1853, entered at the land-office of the United States the southwest quarter of the southeast quarter of section four, in the same township and range, and afterwards, to wit, on the 4th day of August, 1853, received a patent therefor; and that the said John Lathrop, a short time prior to the 6th day of Au-

gust, 1853, entered at the land-office of the United States the south-east quarter of the southwest quarter of section four, in the same township and range, and afterwards, to wit, on the 4th day of August, 1853, received from the United States a patent therefor.

This defendant also admits that after the entry of said lands as aforesaid, and after the location of the line of said railway across the land so entered by him as aforesaid, this defendant made and had a verbal understanding with the said Jesse W. & Kersey H. Fell, John Lathrop, and James C. Spencer, that the whole of said lands so entered by them respectively, together with all of the land so entered by this defendant, excepting certain portions which were the right of way of said company, and two strip' lying along said right of way and on each side thereof, each fifty feet wide and one thousand feet long, should be platted and joined into a town, for the interest of all parties concerned; and in order more conveniently to manage the said land, and to plat and record the same, and also to make such dedications for streets, alleys, and
122 other purposes as might be desirable, and to make conveyances of such lots, blocks, and parcels of land as might be sold from time to time, the said Jesse W. & Kersey H. Fell, John Lathrop, and James C. Spencer, on or about the 28th day of July, 1853, conveyed to this defendant the said several parcels of land so entered by them respectively as aforesaid, and that said deeds, although absolute on their face, conveyed to this defendant the fee-simple interest in said lands, yet they were made with the understanding that this defendant should plat the said lands so conveyed and that portion of his own land not reserved as aforesaid as the town of Dwight, make such dedications and conveyances as he might deem advisable, and divide the residue thereof according to their respective interests, which were agreed to be as follows: Jesse W. & Kersey H. Fell one-fourth, and James C. Spencer and John Lathrop and this defendant one-fourth each; but this defendant says that said interests were to be received as payment for the lands so deeded to him as aforesaid, and also that said parties understood that he reserved from his land so entered as aforesaid the right of way of *of* said railroad and said two strips of land heretofore mentioned, and that the same formed no part of the land so agreed to be platted and divided as aforesaid. This defendant further admits that, prior to the 6th day of August, 1853, the said Chicago and Mississippi Railroad Company located its line across the said northwest quarter of the northeast quarter of section nine as aforesaid, about as the same is shown upon Exhibit No. 1 of complainant's bill, and thereupon this defendant,
123 by his deed bearing date the day and year last aforesaid, conveyed to the said Chicago and Mississippi Railroad Company all of the land lying within a distance of fifty feet in width on each side of the centre line of said company's railroad, as said center line ran through or across the said piece of land so entered by this defendant as aforesaid. This defendant further says that he was the owner of said land so conveyed, and that no other person had any interest therein, and that said deed was made and accepted upon conditions in said deed mentioned, and which will more fully appear in said deed to the complainant's bill attached, and which this said defendant craves leave to refer to with the same benefit and advantage as if herein set forth; and, further, that no obligation existed whereby this defendant was bound to protect the interest of the said railroad company in any right of way or depot grounds across or upon his said lands, but that, on the contrary, the said deed was given in his own interest, and to make more valuable the said lands and other lands belonging to this defendant, lying and adjoining

upon said town-plat, and also that in order to more fully secure the carrying out of the said conditions shown in said deed by the said company, this defendant also reserved from said town-plat, besides the right of way, the said two strips of land hereinbefore mentioned, with intent to convey the same to the said company when the said conditions should be carried out, and for that reason the said right of way and the
124 said two strips formed no part of the lands agreed to be platted and laid out into a town-plat by the said parties as aforesaid. And for the same reason none of the said parties, except the defendant, ever had or claimed any interest therein, nor was said deed of said right of way made in pursuance of any understanding that the interest of said company should be protected so far as to secure its right of way or depot grounds.

This defendant, further answering, says that the said intention to convey said two strips of land to said company was never expressed to said company, and that the said company wholly failed to carry out said conditions shown in said deed, greatly to the pecuniary damage of this defendant, and that the Chicago and Alton Railway Company has also failed to carry out the said conditions, although often requested to do so by this defendant, and for that reason he has never made any conveyance of the said two strips of land or in any way conveyed away his interest therein. This defendant admits that the Chicago & Mississippi Railway Company took possession of the said land so deeded to them as aforesaid, and constructed its railway thereon and erected a depot upon the same, and that said railway and depot are now owned and used by said Chicago and Alton Railroad Company. This defendant further admits that on, to wit, the 30th day of January, 1854, this defendant caused the whole of said lands so deeded to him as aforesaid by the said Spencer, Lathrop, Jesse W. & Kersey H.
125 Fell, and all of said land so entered by him as aforesaid, with the exception of said right of way and the said two strips so reserved by him as aforesaid to be surveyed and laid off into lots and blocks, streets, alleys, and public grounds, as is shown in Exhibit No. 1 to the complainant's bill attached and made a plat of the same, which was duly acknowledged and recorded, but this defendant denies that the said right of way or the said two strips of land were surveyed, platted, acknowledged, or recorded further than it was necessary so to do in separating the same from the town-plat, and also that by such platting and recording this defendant in any way intended to dedicate the said two strips of land for any purpose whatever.

This defendant further admits that afterwards, and prior to the 14th day of May, 1858, this defendant sold and conveyed to divers persons lots and blocks in said town-plat for divers sums of money, and in the transaction of said business received divers notes and contracts and incurred divers expenses, and that on the day and year last aforesaid a division was made between this defendant, Spencer, Lathrop, and the two Fells, according to their respective interests, of the proceeds of such portion of such property as had been sold after deducting expenses, and a partition was made between the said parties of the residue of the whole of said premises so platted, excepting such portions as had been dedicated for streets, alleys, and other purposes; and thereupon this defendant conveyed to the said Spencer, Lathrop, and the
126 two Fells severally the lots & blocks by them severally taken in adjustment of their respective interest in said lands, and that the balance of the lands so held by him and not mentioned in said deeds of conveyances, including several small strips not mentioned in

said division, were, by agreement of all parties in interest, vested in him.

This defendant also admits that the two strips of land were not taken into consideration nor divided in said division, but says that they were not taken into consideration in the division because they were reserved by him in manner aforesaid and never formed any part of the pool or adventure, and the said parties never claimed nor had any interest therein.

And this defendant, further answering, says that he was not trustee of any lands so made into said town-plat as aforesaid; that said lands so deeded to him by Spencer, Lathrop, and the two Fells were deeded to him absolutely in fee-simple; that the understanding, if there were such, was a verbal agreement to hold the lands in trust, and therefore not binding upon him and within the statute of Illinois, (Revised Statutes, chap. 59, section 2,) which is as follows: "No action shall be brought whereby to charge any person upon any contract for the sale of lands, tenements, and hereditaments, or any interest in or concerning them, for a longer term than one year, unless the said contract or some memorandum or note thereof shall be in writing and signed by
127 the party to be charged therewith or some other person thereunto by him lawfully authorized."

And further, this defendant denies that the said lands were held by him in trust for all the parties concerned; and if there were an agreement that the same should be held in trust, that such agreement was only a verbal agreement, and no trust could have resulted therefrom, because of the statutes of Illinois, (Revised Statutes, chap. 59, sec. 9,) which is as follows: "All trusts, declarations, or creations of trusts or confidences of any lands, tenements, or hereditaments shall be manifest and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and have no effect: provided, that resulting trusts, or trusts created by construction, implication, or operation of law, need not be in writing, and the same may be proved by parol."

And this defendant, further answering, says that the said quitclaim deeds made by the said James C. Spencer to the said complainant, Robert P. Tansey, and by the widow and heirs at law of John Lathrop to the said Chicago and Alton Railroad Company conveyed to the said grantees only such legal interest as the said grantors were at the date thereof possessed of, and that such equitable interest as the said complainant alleges in his said bill that the said grantors were possessed of was not such an interest as could be the subject of a conveyance.

128 This defendant, further answering, says that the alleged parol trust stated in said bill of complaint was created in the year A. D. 1853, more than 19 years ago; and this defendant insists and will maintain in this honorable court that the alleged & pretended claim of said complainant to the premises described in said bill of complaint is stale, and cannot in a court of equity be enforced, by reason of the laches of said alleged "cestui qui trust" and complainant in sleeping upon their alleged rights and not sooner attem'ting to assert them; but, as hereinbefore stated, this defendant insists that said supposed trust was by this defendant fully executed upon his part, and that said alleged cestui qui trust, with full knowledge of the land in question & all matters relating thereto, received from this defendant his, the said alleged cestui qui trust, full share and part of all lands to which he, said complainant, was entitled by virtue of said alleged trust, and that said complainant is not

now entitled, either at law or in equity, to any part or portion of said described premises.

And this defendant denies all and all manner of fraud, combination, and confederacy wherewith he is by the said complainant in his said amended bill charged; without this, that neither matter or thing in the said amended bill contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered,
129, 130 confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant.

All of which matters and things this defendant is ready and willing to make plain and prove, and prays to be dismissed with its reasonable costs, &c.

RICHARD P. MORGAN, J'R.,
P'r FALLETE & GARDNER, *Sol'rs.*

(Endorsed:) Filed June 2d, 1873. W'm H. Bradley, cl'k.

131 And afterwards, to wit, on the 6th day of August, A. D. 1873, the said R. P. Tansey, by his solicitors, came and filed his answer to the cross-bill of the Chicago & Alton Railroad Company, to wit:

UNITED STATES OF AMERICA:

In the circuit court of the United States for the northern district of Illinois.

The several answer of Robert P. Tansey, one of the defendants to the cross-bill of the Chicago and Alton Railroad Company against Richard P. Morgan, j'r, Jesse W. Fell, Kersey H. Fell, James Morgan, Charles L. Newell, John B. Campbell, and the said Robert P. Tansey, defendants.

This defendant, saving and reserving, &c., answering, says that he denies all and singular the matters and things in the said complainant's cross-bill contained, excepting such matters as are stated in the bill of complaint filed by this defendant in said cross-bill mentioned; without this, that any other matter or thing in the said cross-bill contained material for this defendant to answer, and not hereby well and suf-
132 ficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this deponent. All of which matters and things this defendant is ready to verify, and prays to be dismissed with his costs, &'.

R. P. TANSEY.

(Endorsed:) Filed Aug. 6th, 1873. W. H. Bradley, c'k.

And afterwards, to wit, on the 6th day of August, A. D. 1873, the said Chicago and Alton Railroad Company, complainant in the cross-bill filed herein by it, now comes and files its replication to the answer of the said Robert P. Tansey, which is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA:

In the circuit court of the United States for the northern district of Illinois.

The replication of the Chicago and Alton Railroad Company to the several answer of Robert P. Tansey, one of the defendants to the cross-bill of the Chicago and Alton Railroad Company against Richard P. Morgan, j'r. Jesse W. Fell, Kersey H. Fell, James Morgan,
133 Charles L. Newell, John B. Campbell, and the said Robert P. Tansey, defendants.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith, that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

C. BECKWITH,
Sol'r C. & A. R. Co.

(Endorsed:) Filed Aug. 6th, 1873. W. H. Bradley, clerk.

134 And afterwards, to wit, in the record of the proceedings of said court in said cause on the 17th day of August, A. D. 1873, is the following entry, to wit:

ROBERT P. TANSEY
v.
RICHARD P. MORGAN, J'R ET AL. } Chancery.

Now comes the complainant, by his solicitors, and on motion Jesse W. Fell, Kersey W. Fell, Henry H. Fell, and Charles L. Newell, defendants herein, duly served with process, and having been heretofore ruled to plead, and failing to plead or answer herein, are now each three times solemnly called in open court and come not, but make default. It is thereupon, on motion, ordered by the court that their defaults be entered, and that the bill of complaint and the matters and things therein charged and stated as to them be taken as true and confessed.

And thereupon the said Jesse W. Fell, Kersey W. Fell, Henry H. Fell, and Charles H. Newell, defendants to the cross-bill filed by the Alton & Chicago Railroad Company in this cause, as also John B. Campbell, defendant therein, are each ruled to answer said cross-bill of said Alton & Chicago Railroad Company within ten days from the entry of this decree.

135 And afterwards, to wit, on the 2d day of September, A. D. 1873, in the record of the proceedings of said court in said cause is the following entry, to wit:

ROBERT P. TANSEY
v.
RICHARD P. MORGAN ET AL. } Original bill.

and

THE CHICAGO AND ALTON Railroad Company
v.
ROBERT P. TANSEY ET AL. } Cross-bill.

and

JOHN P. CAMPBELL
v.
ROBERT P. TANSEY ET AL. } Cross-bill.

Now comes the complainant in the original bill of complaint, by his solicitor, and it appearing to the court that the defendant James Morgan had entered his appearance to the original and cross-bill, but had failed to answer the same in conformity with the rules and practice of the court, and he being now three times solemnly called comes not, but makes default, it is thereupon considered by the court, on motion of the complainant's solicitor, that his default be entered, and that original and
136 cross-bills herein be taken as confessed and true against him. And it further appearing to the court that the defendants Jesse W. Fell, Henry W. Fell, and Charles L. Newell had failed to enter their appearance or answer the cross-bills herein in conformity with the rules and practice of this court, and they being now each, three times solemnly called come not, but make default, it is thereupon considered by the court, on motion of the complainant's solicitor, that their defaults be entered, and that said cross-bill be taken as confessed and true against them. And it further appearing that the defendant John B. Campbell had failed to answer the cross-bill of the Chicago and Alton Railroad Company in conformity with the rules and practice of the court, and he being now three times solemnly called comes not, it is thereupon considered by the court, on motion of said solicitor, that his default be entered, and that said cross-bill and the matters and things therein be taken as confessed and true against him. And it further appearing that the defendant, the Chicago and Alton Railroad Co., had failed to answer the cross-bill of John B. Campbell, in conformity with the rules and practice of the court, and it being now three times solemnly called comes not, but
137 makes default, it is thereupon considered by the court, on motion of said solicitor, that its default be entered, and that said cross-bill and the matters and things therein be taken as confessed and true against it. And on further motion of said solicitor, it is ordered that J. A. L. Whittier be, and he hereby is, appointed an examiner under the amended sixty-seventh rule in equity of the Supreme Court to take proof herein and report the same to the court.

138 *Answer of Richard P. Morgan, j'r, to the cross-bill of the Chicago, Alton & S't Louis Railroad Company.*

UNITED STATES OF AMERICA,
State of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

The several answer of Richard P. Morgan, j'r, to the cross-bill of the Chicago and Alton Railroad Company filed in the case of Robert P. Tansey vs. Richard P. Morgan, j'r, Jesse W. Fell, Kersey H. Fell, James Morgan, Charles L. Newell, John B. Campbell, and the Chicago and Alton Railroad Company.

This defendant, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception and otherwise which may or can be had or taken to the many errors, uncertainties, and other imperfections in the said cross-bill contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says:

That he admits that heretofore, to wit, on the 6th day of August, 1853, the Chicago and Mississippi Railroad Company was a corporation created by and organized under the laws of the State of Illinois, with authority to locate, lay out, construct, maintain, and operate a rail-
139 way in said State from Alton to Joliet. That afterwards, to wit, the 14th day of February, 1855, the name of said corporation was changed to that of the Chicago, Alton and S't Louis Railroad Company, and that afterwards, to wit, on the 15th day of October, 1862, the complainant herein, The Chicago and Alton Railroad Company, acquired and succeeded to and is now in possession of all the rights, powers, privileges, immunities, and properties of the said Chicago, Alton and S't Louis Railroad Company.

This defendant further admits that the said Chicago and Mississippi Railroad Company did, prior to the 6th day of August, 1853, locate and lay out the railway which the said company was authorized to build as aforesaid across the northwest quarter of the northeast quarter of section nine, in township thirty north of range seven east of the third principal meridian, now forming part of the town of Dwight, in the county of Livingston, in said State, and shortly thereafter constructed the said railway as located and laid out, which said railway, so located and constructed, and all of its appendages are now the property of and are used and operated by the said Chicago and Alton Railroad Company; but this defendant denies that Exhibit No. 1 to said complainant's bill attached is a correct copy of said railway and appendages as they now exist.

This defendant admits that prior to the time of the location of the said railway through the said northwest quarter of the northeast quarter of said section nine, as aforesaid, this defendant and the said James
140 C. Spencer were civil engineers in the employ of the said Chicago and Mississippi Railroad Company, and that it was a part of their duty to survey and lay out the line of said railway, but this defendant denies that they had anything to do with locating the same; that the same was located by the chief engineer, Oliver H. Lee; nor did this defendant have anything to do or say about surveying, locating, or laying out the said line of railway across the said land above described, being

then located at Bloomington, and his charge did not extend north of that point; neither did he or the said James C. Spencer, in pursuance of their duties, have anything to do with procuring for said company the necessary right of way, depot grounds and appurtenances, but that certain other persons were employed especially for that purpose.

This defendant admits that he and the said James C. Spencer, by reason of their employment, had knowledge in advance of the public relative to the location and laying out of the line of said railway, and of the depots along and upon the same, and concerning the profits likely to result from the laying out of towns upon said line and adjacent to said depots, but denies that there was any agreement between the railway company and themselves to protect the said company or its interest in purchasing lands; and, on the contrary, says that said company placed no restrictions whatever upon their buying or purchasing lands along said line wherever their judgment should dictate.

141 This defendant further admits that at the time of the location of said line of railway over the premises aforesaid Jesse W. Fell, Kersey H. Fell, and one John Lathrop were friends of the said James C. Spencer and this defendant, and that all of said parties desired to avail themselves of the advantages offered for purchasing lands along the line of said railway; but this defendant denies that he or the said James C. Spencer had any knowledge of the locations of depots and laying out of towns which the said Jesse W. Fell, Kersey H. Fell, and John Lathrop were not also acquainted with from their business and connection with said railroad.

This defendant also admits that prior the 6th day of August, 1853, he entered at the land-office of the United States the said northwest quarter of the northeast quarter of section nine, township thirty north of range seven east of the third principal meridian, and that afterwards, to wit, on the 4th day of August, 1853, received from the United States a patent therefor; and that the said Jesse W. Fell and Kersey H. Fell, prior to the 6th day of August, 1853, entered at the land-office of the United States the northeast quarter of the northwest quarter of section nine, in the same township and range, and afterwards, to wit, on the 4th day of August, 1853, received from the United States a patent therefor; that said James C. Spencer, a short time prior to the 6th day of August, 1853, entered at the land-office of the United States, the southwest quarter of the southeast quarter of section four, in

142 the same township and range, and afterwards, to wit, on the 4th day of August, 1853, received from the United States a patent therefor; and that the said John Lathrop a short time prior to the 6th day of August, 1853, entered at the land-office of the United States the southeast quarter of the southwest quarter of section four, in the same township and range, and afterwards, to wit, on the 4th day of August, 1853, received from the United States a patent therefor.

This defendant also admits that after the entry of said lands as aforesaid, and after the location of the line of said railway across the land so entered by him as aforesaid, this defendant made and had a verbal understanding with the said Jesse W. Fell, Kersey H. Fell, James C. Spencer, and John Lathrop that the whole of said lands so entered by them, respectively, together with all of the land so entered by this defendant, excepting certain portions which were the right of way of said railway company and two strips lying along said right of way and on each side thereof, each fifty feet wide and one thousand feet long, should be platted and joined into a town for the interest of all the parties concerned, and that in order more conveniently to manage the said lands

and to plat and record the same, and also to make such dedications for streets, alleys, and other purposes as might be desirable, and to make conveyances of such lots, blocks, and parcels of land as might be sold from time to time, the said Jesse W. Fell, Kersey H. Fell, James C. Spencer, and John Lathrop, on or about the 28th day of July, 1853, conveyed to this defendant the said several parcels of land so entered by them
143 respectively as aforesaid, and that said deeds, although absolute on their face, conveyed to this defendant the fee simple-interest in said lands, yet they were made with the understanding that this defendant should plat said lands so conveyed and that portion of his own land not reserved, as aforesaid, as the town of Dwight, make such dedications and conveyances as he might deem advisable, and divide the residue thereof according to their respective interests, which were agreed to be as follows: Jesse W. Fell and Kersey H. Fell one-fourth, and James C. Spencer, John Lathrop, and this defendant one-fourth each, but this defendant says that said interests were to be received as payment for the lands so deeded to him as aforesaid, and also that all of said parties understood that he reserved from his land so entered as aforesaid the said right of way of said railroad company and said two strips of land heretofore mentioned, and that the same formed no part of the lands so agreed to be platted and divided as aforesaid.

This defendant further admits that prior to the 6th day of August, 1853, the said Chicago and Mississippi Railroad Company located its line across the said northwest quarter of the northeast quarter of section nine as aforesaid, about as the same is shown upon Exhibit No. 1 with the complainant's cross-bill filed, and that thereupon this defendant, by his deed bearing date the day and year last aforesaid, conveyed to the said Chicago and Mississippi Railroad Company all of the land
144 lying within a distance of fifty feet in width on each side of the centre line of said company's railroad, as said centre line run through or across the said piece of land so entered by this defendant as aforesaid.

This defendant also says that he was the owner of said lands so conveyed, and that no other person had any interest therein, and that said deed was made and accepted upon conditions in said deed mentioned, and which will more fully appear in said deed to the complainant's bill attached, and to which this defendant craves leave to refer with the same benefit and advantage as if herein fully set forth; and further, that no obligation existed whereby this defendant was bound to protect the interests of said railway company in any right of way or depot grounds across or upon his said land, but that, on the contrary, he says the said deed was given in his own interests and to make more valuable the said land and other lands belonging to this defendant lying and adjoining upon said town-plat. And also, that in order to more fully secure the carrying out of the said conditions shown in said deed by the said company, this defendant also reserved from said town-plat, besides the said right of way, the said two strips of land hereinbefore mentioned, with intent to convey the same to said company when the said conditions should be carried out, and for that reason the said right of way and the said two strips of land formed in part of the lands agreed to be platted and laid out into a town-plat by the said parties as afore-
145 said, and for the same reason none of said parties except this defendant ever had or claimed any interest therein, nor was said deed of said right of way made in pursuance of any understanding that the interests of said company should be protected so far as to secure its right of way or depot grounds.

This defendant further says that the said intention to convey said two strips of land to said company never was expressed to said company or to any of the parties to the said town-plat or understanding; and further, that said company wholly failed to carry out said conditions shown in said deed, greatly to the pecuniary damage of this defendant, and that said Chicago and Alton Railroad Company has also failed to do the same, although often requested by this defendant so to do, and for that reason he has never made any conveyance of the said two strips of land or in any way conveyed away his interest therein.

This defendant admits that said Chicago and Mississippi Railway Company took possession of the said land so deeded to them as aforesaid, and constructed its railway thereon, and erected a depot upon the same, and that said railway and depot are now owned and used by said Chicago and Alton Railroad Company.

This defendant further admits that on, to wit, the 30th day of January, 1854, this defendant caused the whole of said lands so deeded to him as aforesaid by the said James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell, and all of said land so entered by
146 him as aforesaid, with the exception of the said right of way and the said two strips of land so reserved by him as aforesaid, to be surveyed and laid off into lots and blocks, streets, alleys, and public grounds, as is shown upon Exhibit No. 2 to the complainant's cross-bill attached, and made a plat of the same, which was duly acknowledged and recorded; but this defendant denies that the said right of way or the said two strips of land were surveyed, platted, acknowledged, or recorded, further than it was necessary so to do in separating the same from the said town-plat, and also that by such platting and recording this defendant in any way intended to dedicate the said two strips of land for any purpose whatever.

This defendant, further answering, denies that James C. Spencer or this defendant, in the course of their employment, or in the discharge of their duty as engineers of said Chicago and Mississippi Railroad Company, ever caused to be made any such tract-book as is in said cross-bill described, or that he ever knew of the existence of such book, and therefore does not know what is delineated thereon, but says that if the said two strips of land appear thereon as the property or appendages of said Chicago and Mississippi Railroad Company, they so appear without the knowledge or consent of this defendant; and this defendant further says that he is informed and believes that the said tract-book mentioned in the said bill was prepared in the office of Henry A. Gardner, then chief engineer of the said company, by direction of
147 Hamilton Spencer, then vice-president and general manager thereof, and that said book was not made until some time during the year 1855, long after said railroad was constructed and in operation; and this defendant says that he never saw or heard of said book until this controversy arose, and that further, that neither the said Chicago and Mississippi Railroad Company, nor its successor, the Chicago and Alton Railroad Company, have acted in good faith, or have relied upon said tract-book, and denies that he is in any way bound by the same, but that, on the contrary, this defendant says the said companies knew and were bound to know by the deed so given to them as aforesaid, and by the records of transfers and ownership of lands kept in accordance with law in said county in which said lands are located, that the said lands, to wit, the said two strips, formed no part of the lands owned by them, and that they are estopped by the same from setting up any claim thereto.

This defendant, further answering, says that the lists of lands owned

by said company, made out by them for the assessor for taxes in said township and county, have never included the said two strips of land, but that they have always returned only the land so deeded to them by this defendant.

This defendant further admits that afterwards, and prior to the 14th day of May, 1858, this defendant sold and conveyed to divers persons divers lots and blocks in said town-plat for divers sums of money, and in the transaction of said business received divers notes and con-
148 tracts and incurred divers expenses. And that on the year and day last aforesaid a division was made between this defendant, James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell, according to their respective interests, of the proceeds of such portions of said property as had been sold, after deducting expenses, and a partition was made between the said parties of the residue of the whole of said premises so platted, excepting such portions as had been dedicated for streets, alleys, and other purposes. And thereupon this defendant conveyed to the said James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell, severally, the lots and blocks by them severally taken in adjustment of their respective interests in said lands, of which conveyances Exhibits No. 3, 4, 5, & 6, attached to said cross-bill, are copies. And this defendant further says that the balance of the lands so held by him and not mentioned in said deeds, including several small strips not mentioned in said division, were, by agreement of all parties in interest, vested in him.

This defendant, further answering, denies that the said Chicago and Mississippi Railroad Company ever claimed the said two strips of land as in any way belonging to them, or ever claimed any dedication to them for depot purposes, neither did said company ever lay down upon said strips any railway-tracks, as the said complainant hath in his said cross-bill alleged, nor were any such tracks necessary to the operation
149 of said company's railroad. And further, this defendant says that the said Chicago and Alton Railroad Company has laid down on the westerly of said strips one track, and that no other track has been put upon either of said strips, neither are any necessary for the operation of said railroad. This defendant also says that the said last-mentioned company well knew when laying the track last mentioned that the said strips were the property of this defendant, and that the same was done against his protests with intent to defraud the defendant of his just rights.

This defendant admits that said Chicago and Alton Railroad Company made and entered into a certain contract or lease with one Joseph McPhersen at the time and substantially as set forth in said complainant's bill, and that afterwards the said Joseph McPhersen erected a good and substantial warehouse, partly upon the said premises leased and partly upon the easterly of said strips belonging to this defendant, and that the said warehouse has since then been used for the purposes for which it was erected, and that afterwards the said interest of Joseph McPhersen came by assignment and vested in the said James Morgan, and that said warehous' is now used for the purposes in said lease mentioned substantially as set forth in said bill; but this defendant denies that said lease covers or leases any portion of said two strips, and also that in making said lease said railroad company relied upon any dedica-
tion whatever, but says that the said McPhersen well knew that
150 said lands were the property of this defendant, and had notice of the same from him, but erected said elevator partly upon said lands with intent to defraud this defendant, and, therefore, this defend

ant says that the said McPhersen or his assignees are estopped from denying this defendant's title thereto or asking any relief of this honorable court.

This defendant also admits that at or about the time and substantially as set forth in said cross-bill the said complainant made and entered into a certain other lease or contract with one John B. Campbell; but this defendant denies that the said complainant relied upon any dedication in making the same, but made the same well knowing this defendant's rights in the premises and against his protests.

This defendant also admits that shortly after the making said last-mentioned lease, the said John B. Campbell did erect upon said premise in said lease described, and which included a part of the easterly of said strip, a good and substantial warehouse, and that the same is now and hath been in use substantially as alleged; but this defendant denies that the said Campbell relied upon any dedication whatever in entering into said lease, and well knew the rights of this defendant in the premises, and erected said elevator thereon against the protests of this defendant and at his own risk.

This defendant also admits that a certain other lease was made and entered into between the said Chicago and Alton Railroad Company and James G. Strong and Charles L. Newell at the times and
151 substantially as is in said cross-bill set forth, but this defendant says that the said lease did not cover or include any of said two strips, and that said company did not in any way rely upon any dedication in making said lease.

This defendant also admits that the said James G. Strong and Charles L. Newell did erect a good and substantial elevator, substantially as stated in said cross-bill, partly upon the premises so leased, and partly upon the easterly of said two strips, and that the same has been used for the purposes in said lease mentioned; but this defendant denies that the same has since become vested, by assignment or otherwise, in said Charles L. Newell, but that, on the contrary, the same has vested by assignment in said James G. Strong and those since become his partners under the name and style of James G. Strong and Company. This defendant also says that the said James G. Strong and said Charles L. Newell, well knowing the rights of this defendant to the said two strips of land, made and entered into a lease with this defendant for that portion of said east strip occupied by them for elevator purposes, and that since the said portion has become vested and is owned by the said James G. Strong and Company, being conveyed to them by this defendant by his deed dated July 25th, 1873, a copy of which is hereto annexed, marked "Exhibit No. 1."

This defendant, answering, denies that the said Chicago and Alton Railroad Company are in any way liable to the said lessees in said
152 leases mentioned, because he says that the said company neither by their charter or the laws of the State of Illinois have any right to hold land devoted to private uses or to private individuals, and therefore the said leases were illegal and ab inetio void.

This defendant further denies that it has ever been necessary for any persons or person to pass and repass over said lands, to-wit, the said two strips, in order to transact freight business at the depot of said Chicago and Alton Railroad Company, and also denies that any person or persons have done so, except with the intention of trespassing upon this defendant's land, and that it has ever been necessary for any one to store freight thereon; but this defendant says that the said David McWilliams, in said complainant's cross-bill mentioned, has, contrary to

the notices of this defendant, trespassed repeatedly upon the easterly of said two strips of land, and has kept his lumber-yard thereon for the sale of lumber for his own private use and gain. This defendant admits that he now claims damages of said McWilliams for the said trespasses and the use and occupation of said land, and has a suit now pending in the circuit court of Livingston County in said State against said McWilliams to recover the same; but this defendant says that the said McWilliams well knew that he was trespassing upon the defendant's land and refused to remove his said lumber-yard, although often requested by this defendant so to do; and this defendant says that he does not know what agreement the said Chicago and Alton Rail-
153 road Company has made with the said McWilliams to protect him in his wrong-doing, but that this defendant believes that the said company and the said McWilliams were conniving and scheming to defraud the said defendant of his just rights, and denies that they are entitled to any legal or equitable relief in the premises.

This defendant further admits that the said James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell have never, before or since the said division of the said lands, as aforesaid, claimed any interest in the said two strips of land, but this defendant denies that at any time he admitted that the ownership of said premises, or any part thereof, was in any one other than himself, and, on the contrary, says that he has always held the legal and actual possession of the same, both in person and by tenants; and further says that said premises have never been used or claimed in any way by the public as public property, but that the said premises are now and always have been used and occupied by private persons for their own private benefit and gain, and this defendant also says that he has always paid all taxes assessed upon said two strips of land, and has always asserted his ownership thereto.

And this defendant, further answering, says, that the said two strips of land, if dedicated at all by him, must have been dedicated to the use
154 of the public exclusively, and that the occupation thereof by said complainant and its leases to private individuals were wrongful, and that this defendant has the right to maintain his aforesaid actions, as being the owner in fee of said premises, subject only to the public easement created by such supposed dedication.

This defendant admits that a difference did arise between the said complainant and himself, in consequence of the said complainant the said railroad companys making false claims to said two strips of land, and at or about the time in said cross-bill alleged; this defendant and the said company did agree to submit the said difference to the honorable David Davis and the honorable Thomas Drummond for final arbitration, and that said agreement is substantially set forth in Exhibit No. 10, attached to said complainant's cross-bill, and this defendant also says that each of the parties thereto entered into bonds in the sum of ten thousand dollars to abide by their decision in said agreement.

This defendant further admits that the said David Davis and said Thomas Drummond assumed upon themselves the burden of said arbitration, and that, after hearing the parties thereto, and the allegations and proofs in the premises, did make an award substantially as set forth in Exhibit No. 11, to said cross-bill attached, but this defendant denies that said award did decide the questions submitted to said arbitra-
155 tors for their decision, and thereford this defendant was in no way bound to abide thereby, and also that said company had their remedy, if at all, upon the bond so as aforesaid entered into by this de.

fendant, and that this defendant is in no way estopped thereby from asserting his claims to said premises.

This defendant, further answering, says that afterwards a suit was instituted in the circuit court of said Livingston County by the said Chicago and Alton Railroad Company, complainant herein, in the names of David McWilliams and J. H. Hagerty, against this defendant, which said suit involved the same points and questions, together with the question of dedication, submitted by this defendant and said complainant to the said David Davis and said Thomas Drummond, and that said case was carried on appeal by the complainants therein to the supreme court of this State; and thereupon the said supreme court made and entered a decision and opinion, a copy of which is hereto attached, marked "Exhibit No. 2," and to be found in the Legal News of February 17, 1872, page 140, affirming the decision in the said circuit court, and this defendant's rights to the said two strips of land, and this defendant says that said decision is and should be a bar against the said Chicago and Alton Railroad Company and all persons from asserting or claiming any dedication on the part of this defendant.

This defendant further admits that the said John Lathrop,
156 prior to the year 1872, died intestate, leaving him surviving his widow, Elizabeth Lathrop, and an only child, Mary E. Lathrop, who was and is his only heir at law, and that the said complainant herein did substantially as aforesaid procure from the said Elizabeth Lathrop and Mary E. Lathrop a quitclaim deed purporting to convey an undivided interest in said strips of land; but this defendant says that said complainant procured said deed knowing that the said Elizabeth and Mary E. Lathrop had no interest in said lands, but wholly for the purpose of harassing and annoying this defendant, and further says that no interest in said two strips passed by said deed to said complainant.

This defendant further admits that said James C. Spencer made his deed to said Robert P. Tansey substantially in the manner and at the time in said cross-bill alleged; but this defendant says that the said Spencer never had and never claimed any interest in said premises, and therefore no interest passed by said deed to the said Robert P. Tansey; but this defendant says that the said Tansey is working in the interest of said complainant and obtained said deed, scheming and conniving with said complainant, to harass and annoy this defendant.

This defendant further admits that said Robert P. Tansey exhibited his bill of complaint in the circuit court of the United States for
157 the northern district of Illinois against this defendant, Jesse W. Fell, Kersey H. Fell, John B. Campbell, Charles L. Newell, and the said Chicago and Alton Railroad Company, setting forth the matters and things as is in the complainant's cross-bill alleged, and as will by said bill more fully appear.

And this defendant admits that he, abiding by and relying upon the decision of the supreme court of the State of Illinois, and with intent to take possession of the lands occupied by trespassers on the said two strips of land, has commenced in said circuit court of Livingston County divers suits, and that said suits are against the parties as set forth in the said cross-bill; and this defendant says that he has obtained judgment against all of said parties excepting the said David McWilliams, which suit is still depending; and this defendant further says that he did not commence said suits with the intention of harassing the said parties or any of them, but only to get his just rights awarded him by the decision of the supreme court as aforesaid, and he

further says that the said parties, well knowing his right to and ownership in said lands and the said decision of said supreme court in the premises, should have yielded up said lands so occupied by them to this defendant, and have paid him for the use thereof; but he says that they,
with intent to annoy and delay this defendant, have hindered said
158 suits, although well knowing that they had no defense to the same
either at law or in equity.

This defendant also denies that the public have ever made any claim whatever to the said lands, either for public use or public grounds, nor has any persons or person representing the public ever laid any claim thereto. That on the contrary the said public and the said town of Dwight have always believed that said lands were the property of this defendant, and with that understanding the said people have leased portions of said strips of land and at various times from this defendant, and have erected stores and other buildings thereon, which said stores and buildings have been used and occupied for their own private use and gain, and that all of the land, except certain portions thereof occupied by the complainant herein and the said defendants to the said suits so commenced by this defendant, are now in the possession of this defendant, and that no other persons except said complainant and said defendants to said suits make any claim to the said lands, and that their claims are entirely for their individual interests and in no way relate to the public.

And this defendant further denies that said railroad company have any right by their charter and the laws of the State of Illinois to hold or lease any of their lands to private individuals for their own private
use and gain, and that said leases so made by said complainant,
159 copies of which are to his said cross-bill attached, are against said
laws of said State, and this defendant therefore claims that the said land so by him deeded to the said railroad company for their right of way, or that part thereof leased to and occupied by private individuals, for their own private use and gain, has reverted to this defendant by reason of non-use by said complainant, as the original owner thereof, and asks this honorable court to so decree in the premises.

This defendant, further answering, says that at the time of the conveyance of said right of way to the said Chicago and Mississippi Railroad Company, he was, and for many years thereafter continued to be, the owner of about six hundred (600) acres of land immediately adjoining on the south and east of the said forty acres so entered by him as aforesaid; that at the southerly end of the said two strips the track of the said railroad company was raised about seven feet above the natural surface of the earth, so that the same could not be passed by a loaded team on Chippewa street and Prairie avenue until a suitable crossing should there be made. That nothing was done by either of said railroad companies towards the construction of a crossing at those points, although repeatedly applied for, and although it was one of the conditions mentioned in said deed for said right of way, until about the year 1866,
and that even at the present time the crossing existing there is
160 incomplete and inconvenient for use by the public. That shortly
after the platting of said town of Dwight the said railroad company constructed a crossing adjoining the northerly end of said two strips, and that by reason thereof the business of said town centered near said crossing, and that the said town grew in consequence thereof, north and west principally, and away from the lands owned by this defendant as aforesaid, by reason whereof this defendant was very greatly injured. That the lands owned by him, as aforesaid, south and east of

said forty acres so platted as aforesaid, were naturally more desirable for building purposes, and would have been occupied for such purposes had access been attainable by the construction of suitable crossings, as said railroad company had covenanted to do.

This defendant further says that none of the said parties to the said original agreement or understanding to plat the lands belonging to them and that portion of the land entered by this defendant, so as aforesaid agreed to be put into said town-plat and formed into a town, have ever, to the knowledge of this defendant, claimed any interest in the said two strips of land so reserved as aforesaid by this defendant from his lands; and, on the contrary, always have known that said two strips of land were so secured by this defendant, and therefore that the same never could have formed any part of the land so platted and laid out according to said agreement.

161 And this defendant further avers that he was not trustee of any of said lands so made into said town-plat as aforesaid; that said lands were deeded to him absolutely and conveyed to him in fee-simple; that the understanding that this defendant was to deed back any portion of the said lands was a verbal agreement to convey his own land, and therefore not binding upon him in consequence of the statute made and confirmed by the State of Illinois, and which statute is as follows: "No action shall be brought whereby to charge any person upon any contract for the sale of lands, tenements or hereditaments, or any interest in or concerning them, for a longer term than one year, unless the said contract, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized in writing."

And further, this defendant denies that the said lands were held by him in trust for all the parties concerned, but that, on the contrary, it was agreed that each of said parties should take such share of said lands as should be thereafter deeded to him by this defendant, and such moneys and contracts as he should turn over to him, and did take the same as payment for the lands deeded by him to this defendant, and not in fulfillment of a trust; and further, this defendant says that the understanding aforesaid was only verbal, and no trust could have

162 arisen therefrom, because of the statute made and confirmed by the State of Illinois, which is as follows: "All declarations or creations of trusts or confidences of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and have no effect: Provided, that resulting trust or trusts created by construction, implication, or operation of law need not be in writing, and the same may be proved by parol."

That this defendant further says that even if said lands were deeded to him in trust for the respective owners thereof, that he only thereby became trustee of the said lands so deeded, and that he only thereby became liable to account for such lands, and that his own land never could by any construction, implication, or operation of law become liable to a trust for any one. That no obligation rested upon this defendant to deed or divide any portion of his own land with said parties, and that such of his own land as was thereafter deeded to the respective parties in settlement of and in payment for their said lands was not in settlement of any trust.

And this defendant, further answering, says that, relying upon said decision of said supreme court, divers persons bought and leased of this

defendant all of the said two strips of land except those portions thereof occupied by the defendants to the said suits, and erected buildings thereon, which buildings will have to be removed if said two
163 strips are declared to be dedicated to the public, thereby causing the said person' great damage.

EXHIBIT No. 1.

This indenture, made this 25th day of July, in the year of our Lord one thousand eight hundred and seventy-three, between Richard P. Morgan, j'r, and Mary E. Morgan, his wife, of Bloomington, in the State of Illinois, party of the first part, and James G. Strong, of Dwight, Illinois, party of the second part, Hugh Thompson, of Dwight aforesaid, party the third part, and Jesse Diffenbaugh, party of the fourth part, witnesseth:

That the said party of the first part, for and in consideration of the sum of two thousand five hundred dollars in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second, third, and fourth parts, their heirs and assigns, all the following-described lot, piece or parcel of land, situated in the village of Dwight, in the county of Livingston and State of Illinois, to wit: Commencing at a point on the west line of East street, five hundred and nineteen feet northerly of the junction of the said west line of East street with the north line of Chippewa street, and thence northerly, on the west line of East street, one hundred and fifty
164 (150) feet; thence westerly to the boundary of the right of way of the Chicago and Alton Railroad Company, fifty feet; thence southerly along said boundary one hundred and fifty (150) feet, and thence easterly fifty (50) feet to the place of beginning, together with the appurtenances and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, and interest, claim and demand whatsoever of the said party of the first part of, in, and to said premises: To have and to hold one undivided half part or share of and in said land and premises unto the said James G. Strong, party of the second part, his heirs and assigns, forever: To have and to hold one undivided fourth part or share of and in said land and premises unto the said Hugh Thompson, party of the third part, his heirs and assigns, forever: To have and to hold the remaining undivided fourth part or share of and in said land and premises unto the said Jesse Diffenbaugh, party of the fourth part, his heirs and assigns, forever.

And the said Richard P. Morgan, j'r, and Mary E., his wife, party of the first part, hereby expressly waive, release, and relinquish unto the said party of the second, third, and fourth parts, their heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

165 And the said Richard P. Morgan, j'r, and Mary E., his wife, party of the first part, for themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, their heirs and assigns, that at the time of the ensealing and delivery of these presents they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee-simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes,

assessments, and encumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second, third, and fourth parts, their heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

RICH'D P. MORGAN, J'R. [SEAL.]
MARY E. MORGAN. [SEAL.]

166 STATE OF ILLINOIS,
County of Cook, ss:

I, William H. Bradbury, a notary public in and for Dwight, in said county, in the State aforesaid, do hereby certify that Richard P. Morgan, j'r, and Mary E. Morgan, his wife, personally known to me as the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

And the said Mary E. Morgan, wife of the said Richard P. Morgan, j'r, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of *of* writing having been by me fully made known and explained to her, and she also being by me fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, and by virtue of all laws of this State relating to the exemption of homestead, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this twenty-eighth day of July, 1873.

[NOTARIAL SEAL.] W. H. BRADBURY,
Notary Public.

167 EXHIBIT No. 2.

Supreme court of Illinois.

Opinion.—(*Filed Jan.* 22, 1872.)

DAVID M. WILLIAMS ET AL.
vs.
RICHARD P. MORGAN.
} Appeal from Livingston.

Opinion

What constitutes a dedication of land to the public use?

1. Effect of making plat: Held, that when the owner of land causes it to be mapped out into lots, streets, etc., and conveys lots pursuant to such map, he is estopped from denying that he has dedicated to the public the lands marked out on the map as intended for the public use.

2. Marking the word "depot" on the map: That the marking the word "depot" upon a certain piece of land in a town-plat is not a dedication to the public use; for that is a private and not a public use, as depot grounds are the subject of private ownership.

3. Representation made by the map: That the representation made by the map to the public was nothing more than that the ground was to be the site of the depot; that that did not imply it was all to remain open to the common; that it would have been entirely compatible with the use of the ground for depot purposes if the railroad company had covered it over with structures for the uses of its road, and shut off all passage over it by the public. (Ed. Legal News.)

Opinion of the court, by Sheldon, J.:

168 The only question presented by this record is, was there a dedication of the strip of land in question, fifty feet in width, to the public use by Morgan, the defendant? August 6th, 1853, Morgan conveyed to the Chicago & Mississippi R. R. Co. a right of way, one hundred feet wide, through the tract of land on which the strip of land is situated, and in the deed made provision for the erection and maintenance of a depot thereon, in case a town should afterwards be located on the track. About January 30, 1854, Morgan did lay out at the point the town of Dwight, and a plat thereof was recorded in the proper office. In the center of the town-plat was designated a hexagonal piece of ground, bounded on the east and west by streets named East and West streets, respectively. This piece of ground included within its limits the ground upon which was the right of way, one hundred feet wide, heretofore granted by Morgan to the C. & M. R. R. Co., but not shown by any lines upon the plat, and fifty feet in addition on either side of the right-of-way ground, making, in all, an irregularly-shaped piece of ground, for the most part about two hundred feet wide and about one thousand feet long, the main track of the C. & M. R. R. Co. marked as running directly through the center. This tract was marked upon the plat as a single parcel, and recorded with the word "depot" upon it.

169 The strip of land in question is the east fifty feet lying between the right of way ground and East street. At that time the whole of the land upon which the village stands was vacant and uninclosed, having recently been purchased from the Government. This piece of ground, so marked upon the plat, has remained uninclosed since, and has been used by the public for years for purposes connected with the business of the railway, without objection on the part of Morgan, and no taxes have ever been paid on it. There being no express grant, the evidence of a dedication, if any, must be found in the act and declaration of the defendant.

There are none such tending to show a dedication to be found since the making of the map, except acquiescence in the use by the public of the vacant and uninclosed portion of the ground which Morgan had not occasion to make use of himself, which is far from being any satisfactory evidence of an intention to dedicate. (Warren v. The President, etc., of the town of Jacksonville, 15 Ill., 236; Kelly v. City of Chicago, 48 Ill., 389.)

Indeed, the manner in which the land has been used since the making of the map disproves the idea of a dedication.

In 1857 the defendant himself erected a corn-crib across the entire north of the strip in question, and has since been in the occupation of a portion of both strips, both personally and by his tenants, to the exclusion of the public, and claiming to be the owner of the portions so

170 occupied, as also of the residue of the ground. Since that time a large portion of the east strip has been continuously occupied by individuals, to the exclusion of the public, without complaint from any one, so far as appears, except the defendant himself. The strip of land on the west side has, the greater part of it, been exclusively occupied by the railroad company.

It is the map or plat alone which must be relied upon as any proof of dedication. The counsel for the appellee does not deny the proposition that when the owner of land causes it to be mapped out into lots, streets, etc., and conveys lots pursuant to such map, he is estopped from denying that he has dedicated to the public the lands marked out on the map as intended for public use. And the only question is whether this piece of land marked out as it was upon the map, not subdivided into lots,

having "depot" marked upon it, is designated on the map as devoted to the public use. The defendant testifies that he made the plot of the town of Dwight, and reserved the two strips of land in question with a view to selling them to the railroad company for a nominal sum, for the enlargement of their depot grounds, when they should have performed the covenants in the deed, of the 100 feet for the right of way, and intended them to remain open for general depot uses in anticipation of that event.

It might fairly be claimed, then, that the plat designated this as
171 depot grounds and nothing more, but that is a private and not a public use. Depot grounds are the subject of private ownership; the public could not reasonably expect to claim any right in them, however it might be with the railway company.

These complainants insist that because this piece of ground was marked out and designated as it was upon the plat they purchased their lots in front of it, on the east side of East street, on the faith that the grounds should always remain for the free use and enjoyment of the public, open ground and unincumbered with any buildings, and that the erection of this building by the defendant will be a disappointment of their expectations raised by the defendant's own acts. But the representation made by the map to the public was nothing more than that the ground was to be the site of the depot, which was kept good; that did not imply that it was to remain an open common. It would have been entirely compatible with the use of the ground for depot purposes had the railway company covered it over with structures for the uses of its road, and shut of' all passage over it by the public. Had the intention been, as the complainants claim, that the ground should remain open for public use, it would naturally have been so indicated on the plat, by its not showing any street-line between the west line
172 of complainants' lots and the railway-track, or its right-of-way grounds; but all along the east side of this strip is marked the line of a street, showing a street of a certain width between complainants' lots and this ground, indicating that the west line of that street was the boundary on the west of the grounds designed for public use, and that the land beyond, on the west side of it, and marked as separated from it by the line of the street, was not designed for public use.

Moreover, accompanying the plat was the instrument in writing of the defendant declaring that he had laid off the land into blocks, lots, etc., as exhibited on the plat, which contains these words: "and the streets and alleys as herein described are hereby donated to the public use."

Here is the explicit declaration in writing of the defendant of just what he did dedicate to the public, and, under the application of the familiar maxim, expressio unius est exclusio alterius, such declaration impliedly negatives the idea of dedicating to the public anything else. We fail to discover from the map, as well as otherwise, the manifestation of an intention on the part of the defendant to set apart this ground for the use of the public; and we perceive no sufficient reason why the defendant should not be allowed to make use of his own ground in proceeding to erect a building upon it or otherwise without being enjoined from so doing by these complainants.

The decree is affirmed.

173 And this defendant denies all and all manner of fraud, combination, and confederacy wherewith he is by the said complainant in his said cross-bill charged, without this, that neither matter or thing

in the said bill of complaint contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge and belief of this defendant.

All of which matters and things this defendant is ready and willing to make plain and prove, and prays to be hence dismissed with his reasonable costs, etc.

RICH'D P. MORGAN, J'R.

VALLETTE AND GARDNER,
Sol's for Defendant.

(Endorsed:) Filed Oct. 9, 1873. W'm H. Bradley, c'k.

174 And afterwards, to wit, on the 2d day of June, A. D. 1875, in the record of the proceedings of said court in said cause is the following entry, to wit:

ROBERT P. TANSEY
v.
RICHARD P. MORGAN ET AL. } Chancery.

Now come the parties, by their solicitors, and this cause now coming on to be heard upon the original and cross bills, pleadings, and proofs herein, and after proceeding with the hearing of the same, by leave of the court, amends his original bill; and after concluding the hearing of said cause, the court, not being now sufficiently advised in the premises, takes time to consider.

And afterwards, to wit, on the 23d day of July, A. D. 1875, in the record of the proceedings of said court in said cause is the following entry to wit:

175 In chancery.

RICHARD P. TANSEY
v.
RICHARD P. MORGAN, J'R, JESSE W. FELL, Kersey H. Fell, The Chicago and Alton Railroad Company, James Morgan, Charles L. Newell, and John B. Campbell, } Original bill.

and

THE CHICAGO AND ALTON RAILROAD COMPANY
v.
ROBERT P. TANSEY, RICHARD P. MORGAN, J'R, Jesse W. Fell, Kersey H. Fell, James Morgan, Charles L. Newell, and John B. Campbell, } Cross-bill.

and

JOHN B. CAMPBELL
v.
THE CHICAGO AND ALTON RAILROAD COMPANY, Robert P. Tansey, Richard P. Morgan, j'r, Jesse W. Fell, Kersey H. Fell, James Morgan, and Charles L. Newell. } Cross-bill.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows: That the original bill of Robert P.

Tansey against Richard P. Morgan, j'r, Jesse W. Fell, Kersey H. Fell,
The Chicago and Alton Railroad Company, James Morgan,
176 Charles L. Newell, and John B. Campbell, be and the same is hereby dismissed, at the complainant's costs. And it is further ordered, adjudged, and decreed, that the said Chicago and Alton Railroad Company and its assigns are entitled to have, hold, use, occupy, and enjoy the following premises, to wit: situated in the northeast quarter of section 9, township 30 north, range 7 east, of the 3d principal meridian, and in the town of Dwight, in the county of Livingstone, in the State of Illinois, bounded as follows: commencing at a point on the east line of Prairie street and the right of way of the Chicago & Alton Railroad Company, and 50 feet distant from the centre line thereof; running thence along the east line of said Prairie street to a point 100 feet distant from the centre line of said right of way; thence northeasterly, on a line parallel with said centre line of said right of way, and 100 feet distant therefrom, and on the easterly line of West street, in said town, to the south line of Mazen street, in said town; thence on the south line of said Mazen street, to a point on said right of way, and 50 feet distant from the centre line thereof; thence southwesterly, on
a line 50 feet distant from the centre line of said right of way,
177 to the place of beginning. Also a parcel of land described as follows, in said section, town, range, county, and State, beginning at a point on the north line of Chippewa street 50 feet distant from the centre line of the right of way of the Chicago and Alton Railroad Company, running thence easterly, on the north line of Chippewa street, to a point 100 feet distant from said centre line of said right of way; thence northeasterly, on a line parallel with said centre line of said right of way, and 100 feet distant therefrom, and on the westerly line of East street to the east line of Franklin street; thence on the east line of Franklin street to a point 50 feet distant from the centre line of the right of way of said company; thence running southwesterly, on a line 50 feet distant from the centre line of the said right of way, to the place of beginning in the cross-bill of the said Chicago and Alton Railroad Company mentioned, and every part of the same, for the purposes of railroad depot grounds, as against the said Robert P. Tansey, Richard P. Morgan, j'r, Jesse W. Fell, and Kersey H. Fell, and each of them, and all persons claiming, or to claim, the same by, through, or under them, or either of them, and that the said Robert P. Tansey, Richard P. Morgan,
j'r, Jesse W. Fell, and Kersey H. Fell, and each of them, and all
178 persons claiming the said premises or any part thereof, by, through, or under them, or either of them, be, and they are, perpetually enjoined from in any manner interfering or intermeddling with the use, occupancy, or enjoyment of the said Chicago and Alton Railroad Company, or of the said John B. Campbell, James Morgan, Charles L. Newell, Eugene R. Stevens, and E. L. Gooding, or either of them, or of any person or persons claiming or to claim said premises, or any part thereof, by, through, or under the said Chicago and Alton Railroad Company for the purposes aforesaid. And that the said Richard P. Morgan, j'r, and all persons who have come into possession of the said premises or any part thereof, by, through, or under the said Richard P. Morgan, j'r, since the filing of the said cross-bill in this court, to wit, the twenty-third day of May, A. D. 1873, do, on demand, forthwith surrender to the said Chicago and Alton Railroad Company all such parts and portions of said premises as may be now occupied by the said Richard P. Morgan, jun., or by such persons claiming by, through, or under him, and not under the said company; and that, upon the neglect of the said

179 Richard P. Morgan, jun., or of such persons so claiming under him, as aforesaid, to deliver possession of said premises as herein required, the said Chicago and Alton Railroad Company may have a writ of assistance, to place it in full possession thereof, for which it may hereafter apply, if it shall have occasion so to do, and that the said Robert P. Tansey, Richard P. Morgan, j'r, Jesse W. Fell, and Kersey H. Fell, and each of them, and all persons claiming or to claim the said premises, or any part thereof, by, through, or under them, or either of them, are perpetually enjoined from demanding or asserting any claim for compensation for the use or occupation of said premises, or any part thereof, as against the said Chicago and Alton Railroad Company or the said Eugene R. Stevens, E. L. Gooding, James Morgan, Charles L. Newell, and John B. Campbell, in said cross-bill mentioned, and of or against any person or persons who have occupied, used, or enjoyed the said premises or any part thereof, by, through, or under the said Chicago and Alton Railroad Company.

And it is further ordered that the costs in said cross bill of said Chicago and Alton Railroad Company be paid by the said Robert
180 P. Tansey and Richard P Morgan, jun., and that the parties entitled thereto have execution therefor. And it is further ordered that the cross-bill of said John B. Campbell be dismissed without prejudice at his costs.

To which defendant Richard P. Morgan, j'r, excepts, and prays an appeal to the Supreme Court, which is allowed, on condition that he file bond in the penal sum of two thousand dollars, with approved sureties, by the 1st day of September next.

181 And thereupon, on said 30th day of July, 1875, the following certificate of evidence was made and filed in said cause, to wit:

United States circuit court, northern district of Illinois.

ROBERT P. TANSEY *v.* RICHARD P. MORGAN, J'R, JESSE W. FELL, KERSEY H. Fell, James Morgan, Charles S. Newell, and The Chicago & Alton R. R. Co.	Original bill.
THE CHICAGO AND ALTON RAILROAD CO. *v.* RICHARD P. MORGAN, J'R, JESSE W. FELL, Kersey H. Fell, James Morgan, Charles L. Newell, and John B. Campbell.	Cross-bill.
JOHN B. CAMPBELL *v.* THE CHICAGO AND ALTON R. R. CO., RICHARD P. Morgan, j'r, Jesse W. Fell, Kersey H. Fell, James Morgan, and Charles L. Newell.	Cross-bill.

Be it remembered that on the second day of June, A. D. 1875, the above-entitled cause came on to be heard, and Robert P. Tansey, complainant in original bill, and the Chicago and Alton Railroad
182 Company, and John B. Campbell, complainants in cross-bill, to maintain the issue on their part, read in evidence the depositions of James C. Spencer, Jesse W. Fell, Charles A. F. Morris, John B. Campbell, S. G. Pearie, Joel H. Coe, Lewis Kenyon, David McWilliams, and Nelson Cornell, the same having been heretofore filed in said cause.

There was also presented in evidence the part of the track-book relating to premises in controversy of the Chicago and Alton Railroad Co.; a certified copy of the recorded plat of the town of Dwight, as made by Richard P. Morgan j'r; a quit-claim deed from James C. Spencer to Robert P. Tansey, and one from M'r's Elizabeth and Mary E. Lathrop to the Chicago and Alton R. R. Co., of their interest in the land in controversy; which depositions read in the words and
183 figures following, to wit:

Deposition of James C. Spencer.

Circuit court of the United States, in and for the *district of* northern district of Illinois.

ROBERT P. TANSEY, COMPLAINANT,
vs.
RICHARD P. MORGAN, J'R, THE CHICAGO & Alton Railroad Company, Kersey H. & Jesse N. Fell, James Morgan, Charles L. Newell, and John B. Campbell, defendants.

EASTERN DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, United States commissioner in and for said district.

The deposition of James C. Spencer, on behalf of the complainant, at the commissioner's office, Milwaukee, Oct. 14, 1872.

Present, Frances H. Kales, of counsel for complainant; H. A. Gardner, j'r, of counsel for def't R. P. Morgan, j'r.

JAMES C. SPENCER, being duly sworn, doth depose and say as follows, to wit:

Q. What is your name, age, residence, and occupation?
A. James C. Spencer; forty-four years old; Milwaukee, Wis.; my profession is that of civil engineer.
184 Q. Are you about to depart from the United States?
A. Yes.
Q. When do you expect to leave, and where to go, and when to return?
A. I leave this week; go to Europe, and return in a year.
Q. Do you know Rich'd P. Morgan, j'r?
A. I do.
Q. And Kersey H. & Jesse W. Fell?
A. I do.
Q. How long have you known them and each of them?
A. From 10 to 20 years.
Q. Did you know them in 1853-'54?
A. I did.
Q. Did you then know John Lathrop?
A. I did.
Q. What was y'r business in 1853-'4, and for whom employed?
A. I was an engineer on and employed by the Chicago and Mississippi R. R. Co., being the line of railroad from Joliet to Alton.
Q. What was Rich. P. Morgan's employment at that time in connection with that R. R. co.?
A. Employed by the same co. and on the same railroad.
Q. Do you remember of the survey and location of this R. R. through what is now know' as the town of Dwight, in Livingston Co., Ill's?

A. I do.

185 Q. Please state who owned the lands known as the southwest q'r of the southeast quarter of section 4, and the northwest q'r of the northeast q'r & the northeast q'r of the northwest quarter of sec. 9, all in township 30 north, of range 7 east of the third principal meridian, in the said county of Livingston, and state by whom each parcel was located.

(Objected to because not a proper method to prove title; the best evidence being the papers showing the title.)

A. I owned the southwest q'r of the southeast q'r of sec. 4. The other three quarters I can only give as I supposed they were owned. I supposed that John Lathrop or his wife, Mary, owned the southeast q'r of the southwest q'r of sec. 4, and that Kersey & Jesse Fell owned the northeast q'r of the northwest q'r of sec. 9, and that R. P. Morgan, j'r, owned the northwest q'r of the northeast q'r of sec. 9.

(Answer objected to because wit's testifies to matters of supposition, not knowledge.)

Witness continues:

Ans. Each parcel was entered, as I have always had reason to believe, by Morgan & Fell in the interests of these parties as stated, but the original patent to my forty was issued in my name, and I presume that the patents for the other three parties were taken out in names of the respective owners that I have mentioned.

186 (Answer objected to on same grounds stated to first part of answer.)

Q. Please state what circumstances the four forty-acre tracts were entered, and give the history thereof, and of the connection thereof with the location of the railroad, and state fully all the facts and circumstances remembered by you in that connection.

(Objected to as immaterial.)

A. You want the whole story as I recollect the entry?

Q. Yes.

A. My recollection is that, in the winter of 1853, Morgan and Fell (Jesse, I think) located and entered these tracts with other tracts adjoining for themselves, Lathrop, and myself, with the expectation of making a railroad station or settlement at a point, as near as practicable, near the center of these tracts; by the center I mean the common point around which the tracts of the 4 diff't parties should lie. These lands were entered, as I always supposed, in the names of the different parties and for the diff't parties. Mine was, and the patents came directly to me. In the spring of 1853, as I recollect the date, I was sent to make the survey from Joliet to Pontiac, under the direction of H. A. Gardner. My intention was to run the line through the centre point of the 4 forties, with the idea of making a railroad station as near *as* that point as I could, so that the interests of the four owners should be equally served. After passing Wilming-

187 ton, I caused to be placed a signal-pole at the centre of these four forties. I afterwards threw the line east, I think something like a thousand feet, I am not sure as to distance, to avoid a slough which threw the line that many feet farther east than I had originally intended. This threw what was subsequently the station-grounds on Morgan's forty. We erected a house in which was placed a party of engineers to superintend the construction of the road, which house was subsequently the station-building for the railroad.

(NOTE.—Def't object' to so much of the answer as seeks to prove by parol the facts of the entry and title to the land, and also to what the

witness testifies to as the intention of the parties in making the entries of the land, and the witness' intention in locating the road, as immaterial.)

Q. Please state how it was that you and Morgan and the Fells and Lathrop came to be interested together, concerning the location of the town of Dwight, and of the railroad across these four forties, and the history of that matter, and how from time to time each party was interested.

A. Morgan, Lathrop & myself were engineers on the road, and had these lands entered for the money to be made in them by the increased value which the construction of the road would give them. My recollection is that the two Fells were associated with us as they were land-agents familiar with land and land-entries, and we considered
188 that their services would be valuable to us, and they were men of standing and integrity. After the road was located, I think in the summer of 1853, I deeded my forty to R. P. Morgan, j'r, in trust, and I presume the others did—I have always understood the others did—for the purpose of making the 160 acres of the four forties into a town, which we afterwards called Dwight. Morgan held my land in trust, and I suppose he did the others, until some time in 1855, I think.

(NOTE.—Def't here objects to the answer of the wit's in regard to the title as parol and incompetent, and his supposition as to title in the other parties as also incompetent.)

When the lots remaining unsold by the trustee were divided between the four parties, the lots deeded to me lay in each of the forties, that is, I had some in each of the forties. The lots which were sold by the trustee were accounted for, or my share, either by money or note or both. At least I was satisfied with the action of the trustee while he held the property.

Q. What were the terms of the trust upon which you and the others conveyed their respective 40-acre tracts to Morgan? I wish y'r recollection.

(Objected to as incompetent; the deeds will speak for themselves.)

A. I can't say as to the wording of the deed. My recollection is that the land was deeded to Morgan, in trust, for the purpose of making a town of the 160 acres, and holding the trust until such time as
189 the parties owning the town see fit to have it divided, which I think was in 1855.

Q. State y'r recollection as to whether Morgan's forty was embraced within this trust, and what were the respective interests of the parties in the 160 acres, after the deeding to Morgan, and what was the understanding or agree't between the owners of the four interests on that subject.

(Objected to as an attempt to prove interest in land by parol.)

A. I have no recollection that Morgan gave any written agree't as to his forty, nor do I recollect any verbal agreement with him; my relations with Morgan were such that I did not require any, but I supposed after I deeded my forty that I was a part owner in the whole 160 acres, without having anything to show for it.

(Objected to by the def't, the latter part of wit's answer where he states his supposition as to his interest.)

Q. What was the basis of that supposition, and state whether Morgan was cognizant thereof, at and before the time of the closing of the trust, and the redeeding of the property in 1855.

A. I do not recollect any conversation with Morgan about the property. I received everything that I expected to get, after the trust was closed,

in the avails of the lots which the trustee sold, and in the lots which he deeded to me when the trust was closed.

190 Q. In the closing of the trust how did the conclusion vary, if at all, from what you supposed the understanding to be as you have above testified to?

(Objected to as immaterial and incompetent.)

A. Not at all.

Q. After you, and the Fells and Lathrop deeded to Morgan in 1853, do you remember of a plat of the town of Dwight being made by M'r Morgan professing to cover the 4 forties above mentioned?

A. The plat, as I understand and believe, covered the 4 forties, but I don't know whether Morgan made it or not.

Q. About when was this plat made, and whether before or after you had deeded to Morgan?

A. I do not recollect.

Q. In pursuance of what understanding was the plat made, and so far as it included your forty, did you ever make any objection to it?

(Objected to 1st branch, incompetent; last branch immaterial.)

A. Well, it was made with the idea of settling the lots, and I made no objection that I ever recollect to it.

Q. Was there any, and what, if any, understanding at any time between you and Morgan, or the other parties, with reference to the railroad interest, and what it was to be in the lands embraced within the town of Dwight.

191 (Objected to as incompetent because seeking to establish by parol interest in lands.

A. I don't recollect any conversation on the subject with Morgan or any of the parties, but supposed that when the R. R. station was located there, ample grounds were to be given the R. R. company for the transaction of their business, and supposed at the time of making the plat, and for some time thereafter, and until this matter was first brought to my notice, that the recording of the plat was a good and sufficient deed to the R. R. co. for all lands shown on the plat marked either right of way or depot grounds. Had I not thought so it would have been my duty as engineer of that division to have seen that the R. R. co. had a proper deed.

(Objected to, the latter part of the ans. when the wit's states his suppositions and inferences.)

Q. Concerning the same subject, state whether M'r Morgan was under any duty to the R. R. co., and how that duty arose, if at all; please state the facts.

(Objected to, as asking the wit's to state a legal conclusion.)

A. Morgan being employed by the R. R. co., and being allowed, as well as myself, to be interested in stations, should have protected the R. R. co., that made these stations valuable.

Q. Do you remember that, on the block or square on which the depot grounds are situate in the town Dwight, there is a strip of land

192 on each side of the R. R. co.'s right of way of about 50 feet in width, and running diagonally and extending from Mazan avenue to Chippewa street?

A. I recollect a strip of land each side of the right of way, about 50 feet in width.

Q. Please state how these two strips of land were treated in the division between you and Morgan and Lathrop and the Fells, when Morgan deeded in 1855.

A. So far as I was concerned no part of these strips were deeded to me; I regarded them as belonging to the R. R. co.

Q. Supposing the R. R. co. not to have acquired any rights in those two strips, how did your interest therein differ from your interest in the lots which were the subject of division?

(Objected to, as asking the witness to testify to a legal conclusion.)

A. I don't think I ever could have had any interest in them, as I think the R. R. co. acquired the right to them and I think paid well for them.

Q. When your lands were deeded to Morgan, in 1853, as you have before stated, what reservations did Morgan make, either verbally or otherwise, concerning his 40*ty* acres, and did he put into the adventure only a part of his 40*ty* acres, or claim so to do; and if so, what part?

(Objected to, as assuming a fact existing of which there is no proof—an adventure between the parties.)

193 A. As I recollect, Morgan made no agree't, verbal or written, as to his 40 acres, but I supposed it was to be treated as part of the whole by him. When he redeeded to us, he did not deed the two strips of land and one or two small triangular pieces marked parks, which I supposed the recording of the plat gave to the town.

(Objected to that part of the ans'r which states the witness'es suppositions.)

Q. Did Morgan ever, prior to or at the time of the division, communicate to you that he made or intended to make any reservation whatever concerning his part of the 40 acres?

(Objected to as leading.)

(Q. modified as follows:) Please state any communications, if any, made by Morgan to you concerning his reservation of any part of this 40 acres, at and prior to the time of the division aforesaid.

A. None was ever made that I can recollect.

Q. When the lands and proceeds were divided in 1855, as you have stated, what claim of exemption from that division did Morgan then make concerning the two 50 feet strips on each side of the R. R. before referred to?

A. They were never mentioned that I have any recollection of.

Q. What understanding or agree't existed between y'rself, Morgan, the Fells, and Lathrop concerning the particular 40 acres upon which the depot-grounds were to be located, prior to their location; and how was the burden thereof to be settled between you?

194 A. No agreement that I recollect of. My intention in making the survey was, as I have stated, to stake the centre of the four forties, when the burden, so called, would be more evenly distributed between the four.

Q. In the division between you and Morgan and the others, how large an interest did the other three aside from yourself get in your original 40*ty*?

A. That I cannot tell. The lots, as I recollect, were divided into 4 equal portions. The location of some lots making them more valuable than others. They were to have been divided, and I think were, so that the lots that each one had were to be equal in value.

Q. So that each of the 4 had an equal quarter of the value of the whole. Is that what you wish to be understood?

A. That is my recollection of it.

Q. You have stated that you and R. P. Morgan were permitted to locate the R. R. somewhat with reference to your personal interests, or something to that effect. Please state what you wish to be understood

with reference to this and from whom the permission was obtained, if any was given.

A. The points through which the R. R. was to run were fixed by the chief engineer, Oliver H. Lee, and we had his permission to locate stations between these principal points when it was for the best interests of the railroad company. My understanding with M'r Lee was that the R. R. co. should have ample grounds for the transaction of their business when we located stations.

195 (Objected to as immaterial.)

Q. From whom, according to your understanding with M'r Lee, was the R. R. co. to have grounds for the transaction of their business?

A. Well, from such of us as owned the tract of land on which he located the station.

Q. Were other stations besides that at Dwight located wherein you and Morgan and Lathrop and the two Fells were interested in a similar manner as at Dwight? If so, name the towns or stations.

A. I do not recollect of any other where these parties were interested; but my impression is that we were all interested in Pontiac. I am not certain as to Lathrop, but I think we other three were.

Q. In what year was this?

A. My impression is that it was in 1853, but I don't recollect.

Q. How many acres were then put into the town-tract?

A. That I don't recollect.

Q. Who was made trustee in that case, to whom conveyance was made?

(Objected to as assuming a fact not proved.)

A. I don't know whether there was a trustee or whether Jesse Fell bought the land in his own name and divided it after it was platted.

Cross-exam'n:

Q. You said in your direct exam'n that "We erected a house at Dwight which was afterwards used as a railroad station." Whom do you mean by "we"?

A. The railroad co.

196 Q. At the time the division was made between you, Morgan, Lathrop, and the Fells, as you have mentioned, who made the partition and arranged the distribution of the lots?

A. My recollection is that it was done by David McWilliams, an outside party.

Q. After the several lots that each party was to receive was settled upon, what was then done?

A. My recollection is that they were deeded by Morgan and his wife to the diff't parties.

Q. And what was done with the money and securities that Morgan had used for the property that had been sold?

A. I don't recollect the particulars, but I was entirely satisfied with the closing of the trust.

Q. Did Morgan account for all that came into his hands?

A. I have no knowledge that he did not; I was satisfied.

Q. Did you and the other parties in interest accept the deeds of the lots from Morgan as a full satisfaction of any claims you might have, legal and equitable, in the four 40*ties*?

A. I accepted it in full, as I supposed everything was divided that he had to divide; that was to be divided. I made no question as to whether my proportion of lots are as valuable as the others or not. I

had entire confidence in those who had charge of the division of the lots, and took what they gave me.

Q. How much lands besides these 4 forties did you five gentlemen enter near Dwight at about that time?

A. I should judge between 3 and 5 thousand acres in all.

197 Q. Of that land how much was in a farm owned by you adjacent to and a little north of Dwight?

A. From 12 to 15 hundred acres.

Q. It joined on to the town-plat?

A. Yes.

Q. How much land did Morgan own south and east of the town-plat, which adjoined it?

A. I do not recollect.

Q. State as near as you can.

A. I don't recollect.

Q. Did Morgan erect a house on his own farm and reside there?

A. He did.

Q. About how much land did occupy and cultivate by himself and his tenants while he was there?

A. I think—it is only what I think, you know—320 acres. How much he owned adjacent I don't know.

Q. Did this land which he occupied and cultivated come up to the boundaries of the original town of Dwight?

A. It did.

Q. How was it bounded on the west?

A. I think by land owned by Fell.

Q. How with reference to the railroad, as you went south from Chippewa street?

A. I don't recollect; I should require the plat.

Q. How was the grade of the R. R. track at Mazon avenue, compared with the natural lay of the land; I mean the upper country by the mill?

A. It was all above it; how much I can't recollect.

Q. How was it at the lower end, near Morgan's land?

198 A. I don't recollect; I can't recollect what the original grade was there. I know in making that road we kept near the surface as we could.

Q. Was there not a village of Pontiac before the R. R. was built?

A. There was a small village, the county-seat of the county.

Q. Was it one of the points which M'r Lee selected where the line of the R. R. must go through?

A. Yes; through or on the west side of it.

Q. How long ago was it that you knew this east strip to be occupied by individuals for their private use?

A. By individuals do you mean men doing business in warehouses?

Q. Yes, or in any other way for their own business.

A. I think they commenced to occupy it as soon as the road commenced to be operated.

Q. Do you recollect Mr. Morgan's erecting a corn-crib and occupying it for some time, running across the whole strip, pretty near where the McPherson warehouse now stands?

A. I can't recollect just now; I think I have an indistinct recollection, and perhaps not. I have not been familiar there since the operation of the road; what I know since is obtained by an occasional trip there.

Q. How long after the commencement of the operation of the R. R. was it that you left Dwight?

A. When the R. R. commenced to be operated I lived in Joliet, and lived there until 1857.

Q. Did you move to Dwight then?

199 A. No. My father and mother lived at Dwight. I never did. I came there and staid 5 or 6 months until my brother died, and I was never there afterwards except upon a visit. I recollect a warehouse my brother John built; don't recollect whether it was on this strip.

Q. Do you recollect having a conversation with M'r Morgan a few years ago, when he had his office in the new station buildings at Dwight, either in the office or upon the platform, in regard to these strips of land?

A. I don't recollect. I recollect that M'r Morgan was having some trouble with the Dwight people about the ownership of a piece of land which they claimed was deeded to the town for a park, and he claimed was never deeded for it.

Complainant has permission from def't to ask a question omitted on direct exam.:

Q. In the deed made by you to Morgan in 1853 for the 40*ty*-acre tract, what was the consideration, if anything, for that deed?

A. No consideration; merely deeded in trust.

(Objected. Last clause of ans'r objected to.)

Adjourned to Oct. 15, 1872, when the defendants appeared by counsel, as before, the def't, R. P. Morgan, j'r, also appearing in person. The counsel for the complainant, before the adjournment, having stated that he would not be present at the time of adjournment, but stipulating that the commissioner might go on and read over the deposition to the witness, making such mere verbal corrections as the witness might desire, the deposition was read over to the witness and no corrections

200 made in the text, but the witness desires to make the following statement, viz: I made my home at Dwight, and was there off and on until my father's death, when I only went there afterwards occasionally. This in explanation of statements on page 20.

JAMES C. SPENCER.

Read to over and subscribed by the witness this 15th day of October, 1872.

FR. BLOODGOOD,
U. S. Comm'r, E. D. Wis.

(Endorsed:) Filed October 23, '72. W. H. B., cl'k.

201 *Deposition of Jesse W. Fell.*

In the circuit court of the United States for the northern district of Illinois. In chancery.

ROBERT P. TANSEY
v.
RICHARD P. MORGAN, THE CHICAGO AND ALTON Railroad Company, Kersey H. Fell, Jesse W. Fell, James Morgan, Charles L. Newell, and John B. Campbell.

Testimony taken before Henry W. Bishop, United States commissioner, Wednesday, 4th Dec., 1872.

Present, F. H. Kales, esq., of counsel for complainant.

JESSE W. FELL, a witness produced on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Kales, and testified as follows:

Q. You are one of the defendants in this suit, are you not?
A. I am.
Q. Where do you reside?
A. At Normal, Illinois.
Q. How far from Chicago?
A. 126 miles, I believe, is the distance.
Q. What is your age?
A. I am in my sixty-fifth year.
202 Q. Do you know Richard P. Morgan, and how long have you known him?
A. I have known him since the year of 1852 or '53.
Q. Do you know Kersey H. Fell?
A. I do; he is my brother.
Q. What was your business in '53-'4?
A. I was at that time engaged in farming and real estate business, and a part of the time acting as the agent of this company, getting the right of way for the Chicago and Alton Road north of Bloomington.
Q. Or the road of which it is the successor?
A. The Chicago & Mississippi it was then called.
Q. What do you know of the location of the Chicago & Mississippi Railroad through the town of Dwight, in Livingston County; you remember of its location?
A. Yes; perfectly.
Q. At about the time of the location of the road through the town of Dwight, what was your interest and the interest of Richard P. Morgan and John Lathrop and J. C. Spencer and K. H. Fell in the lands around and near the depot in that town, and how did the interest arise? State all the circumstances, and give the facts upon this subject.
A. As I now recollect them, they are briefly these: In anticipation of the location of the road, which had not been yet definitely fixed, Col.
203 Morgan, K. H. Fell, Ja's C. Spencer, M'r Lathrop, and myself entered lands in and about Dwight, or where we expected a town or station to be located, subsequently called Dwight. There were four interests in said town; one was owned by K. H. Fell and myself, a second by Spenser, a third by Lathrop, and the fourth by Morgan, K. H. Fell and myself representing a fourth interest. We proposed to enter four quarter-sections of land so that in the laying off of the town-site each could contribute forty acres. And in pursuance of that agreement the four quarters around the town were entered by the four parties spoken of, Col. Morgan representing, as I now recollect, C. W. Spencer & M'r Lathrop in making these entries. It was the intention to run the line of the road through the center of these four forties thus intended to be contributed for a town-site, looking to the interests of the road for directness & eligibility of rout's, as I always understood M'r Lee would not suffer these to be interfered with; but when the line was run for the railroad it was found necessary, as I understood, to pass a little to the south of a center line through the four quarter quarters, cutting diagonally through the forty contributed by Col. Morgan. Soon after the location of the line of the road, I think in the year 1853, to carry out this agreement, we concluded, for the sake of convenience in making sales and executing title papers, to vest the title of the whole q'r section in Col. Morgan, he acting as trustee for the four interests referred to. My recollection is that he gave my brother and me a bond to

204 account for our share of the proceeds arising from the sale of lots throughout the four forties. By this arrangement we all had an equal interest, equitably, as we supposed, in the whole quarter-section. After some sales had been made, including a public auction, I was agreed upon by the other partners to make a division of the remaining lots into four parts as equally as practicably. I accordingly divided the lots remaining unsold into four parcels, giving each a share of the lots in every division of the town, without regard to our former locations, as equitably as practicable, which four divisions were represented by the figures one, two, three, and four, and my recollection is that we cast lots for those figures, which division was regarded by us all as entirely satisfactory. The cash received by Col. Morgan and notes arising from sales, public & private, were, in this final settlement, all accounted for by Col. Morgan to the entire satisfaction of the company.

Q. By the agreement between your brother and yourself, on the one side, and Col. Morgan, what interest was reserved to you, or what proportion of interest in the property?

A. One-fourth.

Q. Was that in the whole property; that is, the four forties?

A. I so understood it was.

Q. Was that interest a divided or an undivided interest?

A. It was an undivided interest, in the first place.

205 Q. That is from and after the making of the agreement until the final division?

A. Yes, sir.

Q. Has your attention been called to the property in controversy in this suit?

A. It has.

Q. That property is located in the quarter-section originally entered by Col. Morgan, as I understand?

A. That is my understanding.

Q. When the agreement was made between Col. Morgan and you & your brother, do you know whether there was a similar understanding or agreement between him and M'r Lathrop and M'r Spencer?

A. That was my understanding.

Q. Derived from Col. Morgan?

A. Derived from Col. Morgan, and I think M'r Spencer. I don't recollect having any talk with Lathrop about it.

Q. Whether their agreements were in writing or not, you do not know?

A. I do not, nor am I certain that mine was; but I feel quite confident it was, from our habits in business matters.

Q. In making this arrangement between Col. Morgan and yourself and the others for this undivided quarter interest in the four forties, was any reservation of any part of the property from that arrangement made by Morgan of any property; that is, did Col. Morgan put in his whole forty or only part into the arrangement you have spoken of?

206 A. My understanding was that he put in all except such portions as had been dedicated or given to the railroad, including the right of way and the additional fifty feet on either side, marked "depot grounds."

Q. Notwithstanding the property deeded to the railroad, and notwithstanding the additional fifty feet on each side, did Col. Morgan receive, without deduction, his full quarter share in the division of the whole property?

A. That was my understanding.

Q. If the two strips of fifty feet each on each side of the railroad grounds had been in the market for sale or the subject of sale or disposition, what would have been your and your brother's proportion of the outcome arising from such sale or disposition?

A. One-fourth part, but I did not suppose that it was a fair subject of sale or disposition by anybody, believing it had been conveyed or agreed to be conveyed to the road.

Q. Did Col. Morgan ever inform you, prior to the time of the division of interests, that the railroad company was not to have the benefit of these fifty feet?

A. He did not; at least I have no recollection that he did.

Q. Did he inform you that he expected to receive any compensation for that property of the railroad?

A. He did not, prior to the division.

Q. How long afterwards was it that he made any such claim, to your knowledge?

207 A. Not until within the last year or two, as I now recollect.

Q. What was the occasion of Col. Morgan making any claim, so far as you remember, and what was said by him, and when?

A. The time or times I do not recollect, but I think that within the last six months in talking with him, on the subject, as a reason why he had not made a deed to the additional strips of fifty feet, he urged that the railroad company had failed in their agreements with him in making the necessary crossings, as I understood it.

Q. What crossings?

A. As I understood him it was the street-crossings, & possibly crossings outside of the town.

Q. At the time you accepted the division in 1854 or '55, and at the time you made the allotments of parcels for yourself and your associates, did you take into account the two fifty-feet strips in question?

A. We did not.

Q. Why not?

A. Because, as I supposed, we all regarded it as railroad property, as I did not know at that time of any failure on the part of the company to comply with the conditions upon which Col. Morgan had given or agreed to give the grounds or the right of way.

Q. Why did you suppose the railroad company were to *le*ave these lands?

208 A. Because they had located their depot on our grounds, or rather surrounded by our grounds, thereby enhancing their value.

Q. When were you first informed that Col. Morgan claimed to have imposed conditions upon the railroad company concerning his gift of these two fifty-foot strips?

A. I cannot say when, but my recollection is not till about two years ago.

Q. You did not know of the claim that conditions had been imposed at the time of the separations of interests in '54–'5, did you?

A. I had not heard, I think, of the conditions at the time of the separation.

Q. Have you read the testimony in detail in this case of M'r J. C. Spencer, taken before the commissioner, M'r Bloodgood, at Milwaukee?

A. I have.

Q. Does your testimony in this matter relate to the same lands referred to by M'r Spencer in his testimony?

A. It does.

Q. What do you say of the correctness of M'r Spencer's testimony so far as it relates to this subject, and how does it correspond with your recollection generally?

A. I regard his statement as substantially correct. In the matter of a division my recollection varies a little. It is quite decided that I made the division of the lots for the parties, but I look upon it as quite probable that I may have advised with M'r McWilliams after-
209 wards as to its equity before it was finally agreed upon, & in this way had his co-operation.

Q. Was Col. Morgan interested with yourself and others at any other point besides Dwight in the location of the railroad and depot grounds? If so, what place?

A. He was, at the town of Pontiac, in the same county.

Q. How many forty-acre tracts were embraced in that transaction?

A. Less than two.

Q. How did the shape of the depot grounds and the side strips at Pontiac correspond with the depot grounds and strips at Dwight?

A. My recollection is that, like the Dwight depot, I gave or conveyed to the company, as the representative of the Pontiac adventure, two strips of fifty feet each on either side of the right-of-way ground, which was intended as depot grounds, and I think so marked on our maps at the time.

Q. In whose name was the legal title to the property at Pontiac placed?

A. In my own.

Q. By whom was the property located originally?

A. I had purchased the property and owned it at the time of the location of the road, and gave out agreements or bonds to the other parties in interest, Richard P. Morgan, James C. Spencer, Peter A. Badeau, & Kersey H. Fell, to account for proceeds and for a final division of the lots, which was subsequently made to the satisfaction of
210 all parties, as I understood it, in a way quite similar to the one adopted at Dwight.

Q. What was Morgan's interest in that transaction?

A. My recollection is, one-fifth.

Q. How much did the railroad give for the conveyance of interests at Pontiac?

A. Not anything other than the location of the depot.

Q. And the benefit to your town?

A. And the benefit thereby accruing to our town.

Q. Have you looked for any bond or agreement between you and the other parties relative to the Dwight transaction?

A. I have.

Q. Have you been able to find any agreement?

A. I have not been able to find any. The probabilities are the agreement or bond given by Col. Morgan, if indeed it was given, as I suppose it was, was given up to Col. Morgan on the settlement of the venture in '54–'5.

Q. You have had no occasion to consult the paper since, have you?

A. No, sir.

Q. The issue presented in this case is as to whether Col. Morgan is now and always has been since '53–'4 the owner of the two fifty-foot strips on each side of the railroad right of way in the town of Dwight, he claiming to be such owner. I wish to ask you how this claim comports as matter of fact with the agreement for the undivided interests between you and the other parties in the four forty-acre tracts?

211 A. Looking at the interests of the parties as affected by the location of the depot, I have always supposed that good faith on our part demanded that these strips should belong to the railroad, not knowing that any conditions were imposed or violated except as already stated.

Q. As between the parties to the agreement, independently of the railroad, how does the claim of Morgan for the whole interest in the two strips, instead of a quarter interest therein, comport or agree or disagree with the contract between him and yourself and the others?

A. From my recollection of that agreement, I would say that if there was any property that had not been divided in either one of the four forties it would be a fair subject for division among the four interests, but I do not claim that there is such.

Q. Why do you not claim that there is such?

A. Because all the property not dedicated as I had supposed has been divided.

Q. What property do you refer to as property you supposed had been dedicated?

A. Property marked as for streets, alleys, depot grounds, right of way, including the two fifty-feet strips in question.

JESSE W. FELL.

212 Subscribed and sworn to before me this 4th day of December, A. D. 1872.

H. W. BISHOP,
U. S. Commissioner.

213 *Depositions of Charles A. F. Morris and John B. Campbell.*

In the circuit court of the United States for the northern district of Illinois.

ROBERT P. TANSEY
v.
RICHARD P. MORGAN, J'R, ET AL. } Bill.

THE CHICAGO & ALTON R. R. Co.
v.
ROBERT P. TANSEY ET AL. } Cross-bill.

JOHN B. CAMPBELL
v.
ROBERT P. TANSEY ET AL. } Cross-bill.

To Mess'rs Valette & Gardner, sol'rs for said Morgan:

You will please take notice that on Monday, January 29, 1873, at the hour of ten o'clock a. m., I shall proceed to take the testimony of Charles A. F. Morris, a witness in the above-entitled cause, before J. A. L. Whittier, special examiner in said cause, at his office in the Republic Life Building, in the city of Chicago, State of Illinois, and that the deposition so taken will be read in evidence upon the final hearing of said cause, at which time and place you can be present and
214 cross-examine said witness if you desire.

Chicago, Dec. 26, 1873.

C. BECKWITH,
Sol'r for Chicago & Alton Railroad Company.

STATE OF ILLINOIS,
County of Cook, ss:

C. A. Knight, first being duly sworn, deposes and says that he served the within notice by delivering a true copy thereof to H. A. Gardner on the 26th day of December, A. D. 1873.

C. A. KNIGHT.

Subscribed & sworn to before me this 26th day of December, A. D 1873.

[SEAL.] M. BYRON RICH,
Notary Public.

215 In the circuit court of the United States for the northern district of Illinois.

Testimony taken before J. A. L. Whittier, special examiner, Monday, December 29th, 1873.

Present, CHARLES A. F. MORRIS, a witness on behalf of the , being first duly sworn, was examined in chief by M'r Wilson, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Charles A. F. Morris; age, 49; residence, S't Paul, Minn.; occupation, civil engineer.

Int. 2. What was your occupation in 1853 and 1854?

Ans. I was general assistant and draftsman in the office of the Chicago and Alton Railroad engineering department, then called the Chicago and Mississippi Railroad.

Int. 3. How long were you in the employ of that road, and between what dates?

Ans. Over three years, from '51 to '54; possibly from 1850. I came in with Lee, the chief engineer.

Int. 4. Were you at that time acquainted with Richard P. Morgan, j'r, and James C. Spencer, John Lathrop, Jesse W. Fell, and Kersey H. Fell?

Ans. I was; I knew them all.

Int. 5. State what was the occupation, at that time, of said Morgan, Spencer, and Lathrop.

Ans. Lathrop had the position of first chief assistant, and Morgan and Spencer as resident engineers of divisions of the road.

216 Int. 6. State what the duties were of Morgan and Spencer.

Ans. Their duties were to locate the line and lay it out permanently for construction-work, furnish the office with field-notes of said location, as also notes of the tying up of the line of the United States Government surveys, section-corners, &c., for the purpose; also to furnish field-notes and profile of said location, showing proposed established grades of said road, with earth-quantities and the general character of structures on said divisions, as also the proposed locations of stations, all subject to the approval of the chief engineer.

Int. 7. Was there any understanding between said company and said Morgan and Spencer in relation to the location of depots? and, if so, state what the arrangements were.

Ans. I have no knowledge as to the company, but it was an understood thing among the engineers that the chief engineer, who represented the company, allowed the engineering staff to enter lands along the line of the proposed road as much and where and when they pleased, and the

locations of depots was left principally to the resident engineers to designate where those depots would be located.

Int. 8. State whether or not this understanding included anything in reference to right of way, depot grounds, &c.

Ans. It was an understood thing or matter that in consideration of a station being established for the benefit of certain parties that the
217 road should be given a certain amount of land, to be used at said station for the operation of the road.

Int. 9. Was this amount of land a fixed amount?

Ans. No, sir.

Int. 10. How was it determined?

Ans. It was usually determined by the resident engineer, what he deemed sufficient for the requirements of that station.

Int. 11. State what were your duties at this time, at the time of the location of the road.

Ans. I had charge of the office. I had the handling of all papers relating to the construction of the road, the making of maps, profiles, plans of mechanical structures, depot buildings, and right-of-way maps, and acted as general assistant.

Int. 12. Where did you obtain the data for making said maps—from whom?

Ans. From the resident engineers and from the chief engineer.

Int. 13. State by whom the map now shown you, marked "Exhibit one" of your deposition, was made, when it was made, and from whom you received the data to make the same?

Ans. It was made by me. I can't positively tell whether it was '53 or '54; it was one of those two years. I received the data from Spencer and Morgan.

Int. 14. For what purpose was this map made?

218 Ans. For the purpose of showing the company's land as required for right of way and operating purposes through the different subdivisions of the United States surveys, to be a permanent record for the use of the company, showing its property along the line of the road.

Int. 15. State whether or not Richard P. Morgan, j'r, and Spencer at any time saw this map; if so, how often, and when?

Ans. I have no doubt they saw it frequently, as those gentlemen were in the habit of coming to the office where I made this map.

Int. 16. Did they know for what purpose the data furnished by them was used?

Ans. Perfectly.

Int. 17. State whether or not it is customary for railroads to have such maps as this showing their right of way and other property as a part of their records.

Ans. It is, so far as my practice has led me. I am now chief engineer of 800 miles of road for the last twelve years, and have had similar maps prepared, showing the property of the company, known as right-of-way maps and depot-grounds.

Int. 18. State whether other maps were made showing the right of way and depot-grounds of the other portions of this road.

Ans. Yes.

Int. 19. By whom?

Ans. By me.

Int. 20. Who furnished the data for such maps?

Ans. The chief engineer and residents.

219 Int. 21. State whether or not the data for this map, marked

"Exhibit one," was furnished before or after the construction of this part of the road.

Ans. It was furnished before the iron was laid.

Int. 22. State whether or not you participated in the advantages arising from the understanding with the chief engineer already referred to in regard to the location of depots.

Ans. Indirectly, I did.

Int. 23. Where were you interested, and in what way?

Ans. I was interested in the entry of land close to the town of Dwight, to the amount of nearly a thousand acres located for me by M'r Morgan, M'r Fell, and M'r Spencer.

Int. 24. State whether or not M'r Lathrop knew of the making of this map marked "Exhibit one," and the purposes for which it was made.

Ans. I have no doubt he did.

Int. 25. State whether or not you ever made any other copy of this plat of the town of Dwight, and, if so, for whom, and when?

Ans. To the best of my recollection, I made two or three copies for the different parties owning the town-site.

Int. 26. State whether or not the plat marked "Exhibit No. 1," attached to the cross-bill filed in this cause by the Chicago and Alton Railroad Company against Robert P. Tansey and others, is a correct copy of the original plat of the town of Dwight made by you and marked "Exhibit one," of your deposition.

220 Ans. It is, with the exception of its not showing in what section or township it is located.

Int. 27. State whether or not it was customary to show upon the plats made by you the depot-grounds as well as the right of way.

Ans. It was.

Int. 28. State whether or not you ever heard any conversation between Morgan, Spencer, Lathrop, and the Fells, or either of them, in regard to the town of Dwight and their interests therein.

Ans. I have; I understood that each of those parties had a fourth interest in the town-site, an interest in specific portions, so far as I recollect.

Int. 29. What reason have you for being confident that Spencer and Morgan saw this map, marked "Exhibit one?"

Ans. For the reason that I got the data from which I made the map from them, and that they were frequently in the office where all such maps were prepared, and saw the work that I was engaged on.

Int. 30. State whether or not any of the parties interested in said town-site ever objected to this map.

Ans. They never did, as far as I know of.

CHA'S W. P. MORRIS.

Subscribed and sworn to before me this 29th day of December, 1873.

J. A. L. WHITTIER,
Special Examiner.

221 *Deposition of John P. Campbell.*

In the United States circuit court for the northern district of the State of Illinois.

ROBERT P. TANSEY
v.
RICHARD P. MORGAN, J'R, ET AL. } Bill.

JOHN B. CAMPBELL
v.
ROBERT P. TANSEY ET AL. } Cross-bill.

CHICAGO & ALTON R. R. CO.
v.
ROBERT P. TANSEY ET AL. } Cross-bill.

To Vall'tte & Gardner, sol'rs for said Richard P. Morgan, j'r:

You will please take notice that on January 8th, A. D. 1874, at eleven o'clock in the forenoon, I shall proceed to take the deposition of John B. Campbell, a witness in the above-entitled cause, before J. A. L. Whittier, special examiner in said cause, at the office of said Whittier, in the Republic Life Building, in the city of Chicago, in said State of Illinois, and that the deposition so taken will be used in evidence upon the final hearing of said cause, at which time and place you can be present
222 and cross-examine said witness if you desire.

C. BECKWITH,
Sol'r for said Compl'ts in said Cross-bill.

CHICAGO, *Jan'y* 5, 1874.

(Endersed:)
We hereby accept service of the within notice by copy this 8th day of January, 1874.

VALLETTE & GARDNER,
Att'ys for Def't Morgan.

In the circuit court of the United States for the northern district of Illinois.

Testimony taken before J. A. L. Whittier, special examiner, Thursday, January 8, 1874.

Present: John P. Wilson, esq., of counsel for

JOHN B. CAMPBELL, a witness on behalf of the , being first duly sworn, was examined in chief by Mr. Wilson and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. John B. Campbell; age, 36; residence, Lexington, K'y; not in business just now.

Int. 2. Are you one of the parties to this suit?

Ans. Yes, sir.

Int. 3. State whether you have any property on any part of the land in controversy in this suit.

Ans. Yes, sir.

Int. 4. What property, where situated, when placed there, and under what circumstances?

223 Ans. I have a warehouse in Dwight, builded upon land leased to me by the Chicago and Alton Railroad Company, in the fall of 1866, for ten years.

Int. 5. What is the value of the warehouse?

Ans. Well, sir, it cost me $5,000.

Int. 6. State whether you are acquainted with Richard P. Morgan, j'r, and, if so, when and where you formed his acquaintance.

Ans. I am acquainted with him. I formed his acquaintance in '61 or '62, in Dwight.

Int. 7. Where were you residing at that time, and where was he residing then?

Ans. I was then making my home southeast of Dwight, seven miles, on a farm. He was residing in Dwight.

Int. 8. Where were you residing at the time you built the warehouse you have spoken of, and where was said Morgan residing at that time?

Ans. Pending the construction of the building I moved to Dwight, in a house which M'r Morgan bought for me. He was residing in Dwight, and had his office in the railroad depot.

Int. 9. Did you have any conversations with him during the time you were building the warehouse in regard to the ownership of the land on which the warehouse is located? If so, state when such conversations were had and what was said.

224 Ans. Well, about the time I commenced building the warehouse and was putting in the stone piers, M'r Morgan, being near us then, was frequently called over, and during many of those calls we had frequent conversations relative to the title to the lands which the railroad company had leased to me. The substance of his conversations with me were to this effect, that he knew that I had obtained of the Chicago & Alton and S't Louis Company a lease of land for the purpose of erecting on said land a warehouse of such size and dimensions as was designated in the lease. He told me in some of these conversations, in one of them especially, that he expected to make claim against the railroad company for the possession of the land named in my lease. "But," he said, "I laid out this village, have an interest in its prosperity, like to see buildings going up, and I will not disturb you in the quiet possession of this land leased to you and my friend Cha's Newell" (it wasn't leased to Newell, but he thought it was at the time) "during the term of your lease from the railroad company." I had frequent conversations with him, and they all tended to the same import. I was on very intimate terms with him, and at his house all the time.

Int. 10. When did Morgan first know that you had a lease of the ground upon which your warehouse is located?

Ans. It was before I began to construct the building.

225 Int. 11. Do you mean before you commenced putting in the foundations?

Ans. Yes, sir. He offered to assist me in getting the lease, but said his signature wouldn't probably be of any consequence, since the railroad company and he were at loggerheads.

Int. 12. State whether M'r Morgan has at any time objected to your taking possession of the land and using it.

Ans. No, sir; he encouraged it.

Int. 13. State when M'r Morgan first made any claim against you in regard to the land for rent.

Ans. I think it was last February a year ago. When he got the decision in the supreme court of the State here he sent me a lease to sign. I think that was about the time. I have the lease at home, and can

send a copy to the company whenever they want it. That will corroborate my statement.

Int. 14. State whether or not you were influenced in regard to going on with the construction of your building by M'r Morgan's statements that he would not disturb you.

Ans. No, sir; I was not.

Int. 15. You thought you had a clear title from the railroad company?

Ans. Yes, sir. I wasn't dealing with Morgan at all; I was dealing with the company.

Int. 16. How late did M'r Morgan give you assurances that you would not be disturbed by him?

226 Ans. I should say four years after the erection of the house.

Int. 17. Do you still own the warehouse?

Ans. Yes, sir.

Int. 18. For what purpose is it used?

Ans. For elevating grain and shipping grain in bulk to Chicago.

Int. 19. By the Chicago, Alton, and S't Louis Road?

Ans. Yes, sir.

Int. 20. State the location of the warehouse with regard to the depot of the Chicago and Alton Road at Dwight.

Ans. The confines of the building next to the track I should think about three feet and a half; enough to allow the cars to pass; part on the railroad right of way and part on the 50-foot strip. It is diagonally opposite the depot, a hundred and twenty-five feet, say, north.

JOHN B. CAMPBELL.

Subscribed and sworn to before me this eighth day of January, 1874.

J. C. L. WHITTIER,
Special Examiner.

(Endorsed:) Filed June 2d, 1875. W'm H. Bradley, cl'k.

227 *Depositions of L. G. Perre, Joel H. Coe, Lewis Kenyon, David McWilliams, and Nelson Cornell.*

In the circuit court of the United States for the northern district of Illinois.

TANSEY v. MORGAN	Bill.
vs. C. & A. R. R.	In chancery.
v. TANSEY ET AL.	Cross-bill.

Testimony taken before Ja's A. L. Whittier, special examiner of said court, Thursday, July 2d, 1874.

Present: H. A. Gardner, esq., of counsel for Morgan; J. P. Wilson, esq., of counsel for C. & A. R. R.; and the witness below named.

L. G. PEARRE, a witness on behalf of the , being first duly sworn, was examined in chief by M'r Wilson, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. L. G. Pearre. Age, 34. Residence, Dwight, Ill. Occupation, attorney at law.

Ans. I used a building for storing grain, and corn-cribs.

Int. 6. Was any portion of them in any part of the strips in controversy?

233 Ans. There was. The cribs, and a part of the building we used for grain, and the scales were, I think, entirely on the east strip.

Int. 7. State whether or not teams, in going to and from your cribs and warehouse, passed over *over* this east strip.

Ans. They entered upon it, necessarily, to get to either of them.

Int. 8. Do you know Richard P. Morgan, j'r?

A. Yes, sir, I do.

Int. 9. How long have you known him?

Ans. Well, I think my first acquaintance with him commenced in 1864 or '5.

Int. 10. You may state whether M'r Morgan, to your knowledge, claimed any interest in this east strip while your crib was on the same.

Ans. Not to my knowledge.

Int. 11. You may state whether he ever made any demand on you for rent or compensation for use of the same.

Ans. Never.

Cross-examination by M'r Gardner:

X-int. 1. Do you know whether M'r Morgan, at any time after your arrival in Dwight, claimed to own any buildings upon either of the said strips?

Ans. He did for a time.

X-int. 2. State what he claimed to own, and where.

234 Ans. There was a building erected by the Newell brothers in 1872, I believe, which M'r Morgan was reputed to have purchased afterwards.

X-int. 3. Do you know if M'r Morgan at any time claimed to own the premises in question in this suit; if so, when and how?

Ans. I believe the first that I ever knew of his claiming any ownership or control over the premises was, I think, in about 1868, and I only know that by hearsay.

JOEL H. COE.

In the circuit court of the United States for the northern district of Illinois.

Testimony taken before Henry W. Bishop, master in chancery of said court.

Present: LEWIS KENYON, a witness on behalf of the , being first duly sworn, was examined in chief by M'r , and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Lewis Kenyon; age, 64; residence, Dwight, Livingston Co., Ill.; occupation, attorney-at-law.

Int. 2. How long have you resided in Dwight?

Ans. Seventeen years.

Int. 3. State whether you know the location of the premises in controversy in this suit.

Ans. I do.

235 Int. 4. You may state in what way they have been occupied or used during the time you have resided in the town of Dwight.

Ans. In the years 1857 and '8 they were occupied by the Chicago and Alton Railroad Company, in part by a tenant-house or section-house,

and was used by the company, with others, as a place for loading and unloading stone, lumber, and freight generally, and also a portion of them were used and occupied by cribs and warehouse owned by John C. Spencer and occupied by Spencer, Coe, and Pearre, the two last witnesses, during 1858, '59, & '60, and in 1858 and '59 there were other cribs on the east strip near the corner of the big warehouse, one owned by Col. Morgan and the other by James Ross.

Int. 5. When did you become acquainted with M'r Morgan?

Ans. In 1857 I first became acquainted with him.

Int. 6. Did you ever hear him find any fault with the way in which either of these strips was used or occupied?

Ans. I have.

Int. 7. When and what did he say?

Ans. The first objection that I ever heard him interpose was when the section-house owned by the railroad company was still standing on the premises and M'r Morgan claimed that the use was not in com-
236 pliance with the grant made to the railroad company; that the town was laid out, and the village lots, for the purpose of realizing money from their sale, and if the railroad company were allowed to cover it with Irish shanties it would prevent the sale of a corresponding number of lots, and that he should require the company to remove the section-house from the premises, which was done, I should say, about 1860 or '61.

Int. 8. For what purpose was the section-house being used at the time he made this objection?

Ans. Used and occupied by the section-boss, I think, as a home, and a boarding-house for the section-hands.

Int. 9. Did he at that time claim to own this strip himself?

(Objected to.)

Ans. He did not.

Int. 10. Did you hear him make any other objection to the way in which those strips were used and occupied; if so, when?

Ans. He did in connection with the conversation related in answer to preceding interrogatory No. 7. He did say that he conveyed the grounds to the railroad company for railroad purposes only, and not for private residences; a large portion of the section-house was on the strips, if not wholly. About 1867 I was then acting as village attorney for the town of Dwight, and had a conversation with Col. Morgan about the
237 ownership of the strips, which arose in this wise: Col. Morgan proposed to deed to the corporate town of Dwight two angular pieces of ground called the east and west parks, and I rejoined to him that the parks, I thought, were already the property of the town of Dwight, and that his proposition, I thought, was something like Satan's offering to give Christ lands on certain contingencies, as I believed that the town of Dwight had a perfect title to the parks by dedication, and that the railroad company held equally good a title to the two strips by dedication; and I further remarked, "Col. Morgan, I think this is a new idea of yours, and that you intended to convey the parks to the town of Dwight and the strips of ground to the railroad company." Col. Morgan then rejoined, "It was my intent that they should have those lands, and they would have had them had they behaved themselves properly and have done as they agreed to on their part." This may not have been the exact language, but it is the essence and import of the conversation.

(Answer objected to.)

Cross-examination waived.

LEWIS KENYON.

238 *Deposition of David Mac Williams.*

In the circuit court of the United States for the northern district of Illinois.

Testimony taken before Henry W. Bishop, master in chancery of said court.

Int. 1. Please state your name, age, residence, and occupation.

Ans. David MacWilliams; age, 40; residence, Dwight; occupation, merchant.

Int. 2. How long have you resided in Dwight?

Ans. Almost twenty years.

Int. 3. Do you know Richard P. Morgan, j'r?

Ans. I do, sir.

Int. 4. How long have you known him?

Ans. Nineteen years last May since I first met him.

Int. 5. Do you know the location of the two strips of land in controversy in this suit?

Ans. I do.

Int. 6. State what you know in regard to the way in which they have been used and occupied prior to the year 1868.

Ans. For elevator purposes and unloading lumber, stone, coal, merchandise from the railroads. In earlier years there were a number of corn-cribs on them.

Int. 7. Did you ever use or occupy any portion of either of these strips?

239 Ans. Yes, sir.

Int. 8. When and what portion, and for what purpose?

Ans. In the year 1854 I had a corn-crib that stood about the north end of the Campbell elevator, stood there, I think, for three years, and about the year 1858 or '59 I purchased a corn-crib of M'r Morgan, and it remained there until the excavations were commenced for what is called the McPherson elevator, three or four years; also purchased a corn-crib of James L. Ross, just by the side of this other crib and about the same time, and wish to state that that crib remained until removal at the same time with the other, and the ground south of the McPherson elevator was used for a lumber-yard in common with others. We had possession most of the time. In the year 1862 we leased from the Chicago and Alton Railroad Company the ground now occupied by the McPherson elevator. We made excavations for a warehouse in the summer of 1862, and proceeded as far as I think laying the foundation, one tier of heavy flat flagging-stones. My partner then went in the Army and we abandoned the enterprise, and in '64 I sold out our interests in the lease to M'r McPherson.

Int. 9. Were these cribs that you have spoken of used by you while they remained upon the premises?

Ans. Yes, sir.

240 Int. 10. You state that you purchased one crib from Morgan. What Morgan do you refer to?

Ans. Col. Morgan, the party in this suit.

Int. 11. At the time he sold the crib to you did he make any claim to the ground on which it stood or to any part of either of the strips?

Ans. None.

Int. 12. Did M'r Morgan at the time know of the way in which these strips were used?

Ans. I think he did. He was residing there and about the premises very frequently.

Int. 13. Did he make any objection to the way in which these premises were used and occupied to your knowledge?

Ans. I never knew of any objection previous to 1863. That is the date when I first heard of any claim that he had upon them.

Int. 14. What, if anything, did you hear him say in 1863?

Ans. Well, I couldn't state that I heard him say anything at that time, but I think a rumor was sprung in our community that M'r Morgan had some claim on those strips of land.

Int. 15. When did you first learn from him that he claimed an interest in the premises in question.

Ans. The first positive date that I heard it from him was February 7, 1869. At that time M'r Morgan was in my office and wanted
241 to lease me a portion of these strips for a lumber-yard, and in this conversation I told M'r Morgan that I didn't recognize him as the owner of the strips; that I considered they belonged to the Chicago and Alton Railroad, and that I had permission from them to use such portions for unloading lumber as were not occupied by the elevators. I then said to M'r Morgan that I knew that it was his intention that said strips should belong to the railroad company, and that in equity he had no rights in them. He replied that it was his intention for a nominal sum to deed said strips to said railroad company, but that they had not carried out their agreement or conditions with him; had treated him meanly, and he did not intend to carry out or fulfil his agreement with them. I asked him what *conditions* the company had not carried out their agreements with him. His reply was that they had not put in certain street crossings that they had agreed to.

(Question and answer objected to.)

Int. 16. You may state whether M'r Morgan at any time asked compensation of you for the use and occupation by you of the premises in question; and, if so, when was the first time?

Ans. He did. It was about the time specified in the above conversation. This was the second time that he demanded payment and wanted to lease it to me. He had done so a short time before.

Int. 17. State about how long before as near as you can.

242 Ans. In the fall or early winter preceding.

Int. 18. State where the depot building is situated with reference to the north and south ends of these strips.

Ans. Well, I should think about midway, about the middle of the grounds.

Int. 19. State what means of access there was to the depot prior to 1870 in regard to these strips; whether it was necessary to pass over them to get to the depot.

Ans. There was no other means of access from East street or West street except across these strips.

Int. 20. State what you know, if anything, in regard to the partition of lots in the town of Dwight by Col. Morgan, Jesse W. Fell, Kersey H. Fell, John C. Spencer, and John Lathrop.

(Question objected to.)

Ans. In the month of May or June, 1854, Jesse W. Fell called upon me and stated that he had just come from Morris, where he had made a settlement with their agent, M'r Gould, for all the lots which had been sold up to that date, and that his object in visiting Dwight was to divide the lots unsold equally among the four owners. M'r Fell proceeded to make the distribution of lots into four parts and in the following man-

ner, to wit: one part to M'r Morgan, one part to M'r Spencer, one part to M'r Lathrop, and one part to the Mess'rs Fell, which said division was made, I having since seen the record. Said lots were taken
243 promiscuously over the entire town plot for each owner or partner.

Int. 21. State whether or not anything was said in making the partition in regard to the premises in controversy, and whether they were taken into consideration in making the partition.

Ans. Nothing was said in regard to the strips in question.

Cross-examination by M'r Gardner:

X-int. 1. Was any one present at the time of this division you spoke of besides M'r Fell and yourself?

Ans. M'r Fell and myself and John Routzong.

X-int. 2. State whether from your own knowledge you know that the division was made and deeds were given exactly as you made the division.

Ans. I do.

X-int. 3. Do you know whether this division, made as you have stated, was considered a settlement of the interests of the different parties of the lands included in the town plot of Dwight.

Ans. I so understand it.

DAVID McWILLIAMS.

244 *Deposition of Nelson Cornell.*

In the circuit court of the United States for the northern district of Illinois.

Testimony taken before Henry W. Bishop, master in chancery of said court.

Int. 1. Please state your name, age, residence, and occupation.

Ans. Nelson Cornell; age, 55; residence, Dwight; occupation, farmer.

Int. 2. How long have you resided in Dwight?

Ans. Since October, 1854.

Int. 3. Do you know the location of the premises in controversy in this suit?

Ans. I do.

Int. 4. Do you know Richard P. Morgan, j'r; and, if so, for how long?

Ans. I do; about twenty-four years.

Int. 5. Did you ever hear him say anything in regard to the premises in controversy?

Ans. Yes, sir.

Int. 6. State when and what he said as near as you can.

Ans. The first conversation we had in regard to anything about these pieces of land, I was roadmaster at the time; it was after he built his house—I think along in '56 or '57. His house was near one of the
245 strips, and he applied to me to have a crossing put in and filled on Chippewa street. I told him that it would take a good deal of material, and I was not authorized to do it without orders from headquarters. He then stated that he had given the road a right of way of 100 feet through the entire land and 50 feet more on each side for a thousand feet long, and that they on their part were to build depot buildings, crossings, and keep them up for all time to come.

Int. 7. Did you have any other conversations with him?

Ans. I had a conversation with him in 1865 or '66, or about that time, in which he said he was going to bring David McWilliams to time, an make him pay rent for that piece of land he was using. I said to him, "I thought you gave that strip to the railroad," and he said he hadn't given a deed for the extra fifty feet on each side, and that they hadn't fulfilled on their part, and he would not convey, or didn't intend to convey, or something to that purpose.

Int. 8. State what you know, if anything, in regard to a section-house being situated on one of these strips.

Ans. There was a section-house built there in '54, I think. I think it stood either partially or wholly on the 50-foot strip. The building was about sixteen by twenty-four. It was used by the railroad as much as ten or twelve years for railroad purposes. I bought it and sold
246 it again, and the man I sold it to moved it away.

Int. 9. Was Morgan an officer of the road?

Ans. He was superintendent of the road at the time they commenced running through to Joliet, I think, or shortly after; from 1854 to 1857 or thereabouts.

Cross-examination waived.

N. CORNELL.

(Endorsed:) Filed June 2d, 1875. W'm H. Bradley, cl'k.

And which deeds reads in the words and figures following, to wit:

247 This indenture, made the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and seventy-two, between James C. Spencer and Kate P. Spencer, his wife, party of the first part, and Robert P. Tansey, of S't Louis, party of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, forever released and discharged therefrom, has remised, released, conveyed, and quit-claimed, and by these presents do remise, release, convey and quit-claim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following-described lot, piece, or parcel of land, to wit: Fifty (50) feet in width, laying and bordering upon the northwest side of East street, and fifty (50) feet in width, laying and bordering upon the northeast side of West street and extending from Mazon avenue to Chippeway street, in the original town plat of the town of Dwight, Illinois, said strips lying upon each side of the right of way, as originally conveyed to the said The Chicago and Mississippi Railroad Company, and extending from Mazon avenue to Chippeway street, as laid down in the original plat of the town of Dwight, county of Livingston, and State of Illinois, to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise thereunto appertaining; and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

And the said James C. Spencer and Kate P. Spencer, his wife, party of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and

to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year above written.

(Signed) JAMES C. SPENCER. [SEAL.]
(Signed) KATE P. SPENCER. [SEAL.]

Signed, sealed, and delivered in presence of—
THO'S SCURR,
C. C. PAINE.
[Rev. stamp, 50 cents.]

STATE OF WISCONSIN,
Milwaukee County, ss:

I, C. C. Paine, a notary public in and for said county, in the State aforesaid, do hereby certify that James C. Spencer and Kate P. Spencer, his wife, who are personally known to me as the same persons whose names are subscribed to the foregoing instrument of writing appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth. And the said Kate P. Spencer, the wife of the said James C. Spencer, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal this twenty-sixth day of March, A. D. 1872.

[NOTARIAL SEAL.] (Signed) C. C. PAINE,
Notary Public, residing in Milwaukee County, Wisconsin.

247 (Indorsed:) Copy. Quit-claim deed. James C. Spencer and Kate P. Spencer to Robert P. Tansey.

248 And the defendant, Richard P. Morgan, j'r, to maintain the issue on his part, read in evidence the depositions of Richard P. Morgan, j'r, William H. Bradbury, James G. Strong, L. G. Pearre, Joseph I. Dunlap, and David McWilliams, as follows:

249 *Deposition of Richard P. Morgan, j'r.*

Dwight, Ill., July 17, '74, 2 p. m., Monday. H. A. G., j'r, J. P. W.

Int. 1. Please state your name, age, residence, and occupation.

Ans. Richard P. Morgan, j'r; age, 45; residence, Bloomington, I'a; occupation, civil engineer.

Int. 2. Are you the person who was the patentee of the northeast ¼ of section 9, township 30, range 7?

Ans. I am.

Int. 3. Do you recollect causing a plat of the village of Dwight to be made out and recorded in January, 1854?

Ans. I do.

Int. 4. Are you acquainted with the two strips of land, each 50 feet wide, adjoining the 100 feet conveyed by you to the railroad company, and bounded, respectively, by East street and West street?

Ans. I am.

Int. 5. At the time you made out and recorded the plat what intention, if any, had you in respect to dedicating those strips, or either of them, to public use, or any other purpose whatever?

(Objected to.)

250 Ans. I never had any intention of dedicating them to the public, or thought of such a thing.

Int. 6. From the time of the recording of the plat down to about 1863, how was the west strip occupied, if at all?

Ans. It was generally unoccupied, temporarily occupied sometimes with lumber, small portions of it. I allowed a carpenter's shop to be put up there by M'r Adam Clarkson, about in the middle, a little to the south of the middle of the west strip.

Int. 7. How long did Clarkson continue that occupation with your consent?

Ans. Well, I think it was about 2 years; the building was then sold and moved off.

Int. 8. Since 1863, how has that strip been occupied?

Ans. It has been principally occupied by the Chicago & Alton Railroad Company as a timber and framing yard for bridges and water-tanks and storing timber, by a track extending nearly the whole length of it, put down, I think, in 1864 or 1865, and a large coal-depot building about 25 by 100 feet.

Int. 9. About what proportion of the area of the west strip has been occupied in this manner by the railroad company?

Ans. During that period generally not less than two-thirds.

Int 10. How was the occupation by the railroad company which you have described in reference to the public, exclusive or in common with it?

251 Ans. It was exclusive.

Int. 11. Have you at any time, and, if so, when, occupied any portion of the west strip?

Ans. Yes, sir. I occupied a portion of it with some corn-cribs in the winter of 1866-'7. I leased a small piece at the north end of the strip in 1866, I think it was, a lease running for 5 years, to Newell & Flaherty, for storing agricultural implements, wagons, &c. I afterwards put a building on the ground in 1866, just west of the depot, near the centre of the strip north and south, which I have since sold, together with the ground; I think I sold it a year and a half ago; sold it in 1872.

Int. 12. Did you occupy that building yourself or by a tenant?

Ans. Occupied it by a tenant.

Int. 13. How is that west strip occupied at the present time?

Ans. there is about 600 feet of it occupied by the railroad company; sixty feet directly west of the passenger-depot is occupied by M'r Schuman, who purchased of me; this is the parcel I spoke of formerly as having rented to a tenant and since sold; a hundred and twenty-five feet of it I have leased for a coal-yard and wagon and blacksmith shop, at the north end; the residue is unoccupied.

Int. 14. How is the side-track you speak of on the west strip occupied, and has it been since it was constructed?

252 It is used for passing trains occasionally, but mainly as the terminus of the western division of the Chicago and Alton Railroad Company.

Int. 15. Do you remember when the coal-house and side-track on the west strip were constructed?

Ans. It was in the winter of 1867 and '68.

Int. 16. Did you have any communication with the officers of the railroad company at the time they were constructing the side-track or erecting the coal-house in reference to your claim to the property; and, if so, what?

Ans. I told the agent here and the men who were putting down the track that it was my land.

Int. 17. After the recording of the plat and down to February, 1869, how was the east strip occupied?

Ans. It remained open and unoccupied for several years. It was used by persons crossing and recrossing to the railroad-depot. In 1857, I came to Dwight and erected a corn-crib across the entire width of this strip; then James Ross erected a corn-crib next north of me by my permission. They stood a little south of the centre of the strip, about where the McPherson warehouse now stands. The length of the corn-crib was across the strip. There was a small building put up for shipping grain by John C. Spencer, I think, which was
253 removed a year or two afterwards. I don't recollect the date. Next north of that was a small building put up with my permission by Tom Bohan. I gave him the lumber and let him build a house on it—a little shanty—and he occupied it for several years. Next north of that was occupied by the railroad company for cattle-yards and cattle-shoot; that is my recollection.

Int. 18. Do you recollect if at any time that part of the strip between Ross and Bohan was occupied?

Ans. It was occupied by M'r McWilliams as a lumber-yard, and by M'r Webster. They occupied jointly, and then afterwards Webster occupied exclusively until I had him removed.

Int. 19. How was any other portion of the strip occupied all this, prior to 1869?

Ans. Well, the north end above the cattle-yards was occupied by M'r Webster as a sort of dwelling-house and store and lumber-yard, which I had arranged for him to occupy when I had him removed from the center piece. I am inclined to think it was in 1869 I made a lease to Chalfant; it was the fall of 1868, of the north end of the last strip; I made him a lease of a piece of ground on which to build an office. He was a physician, and I made him a lease for five years, and he built an office and occupied it.

Int 20. Any other occupation that you remember of that last strip?

254 A. I don't recall any now, up to 1869. It was occupied several years at the south end, about 100 feet, by M'r McWilliams, as a lumber-yard, prior to 1869; exclusive occupation.

Int. 21. Where did you reside from 1860 until the fall of 1866?

Ans. In Wilmington, Illinois.

Int. 22. Were you informed at the time, or shortly after, of a lease by the Chicago & Alton Railroad Company to McPherson of any portion of the east strip?

Ans. Yes, sir; M'r McPherson told me of it on the cars, on his way to Chicago. I met him and I gave him notice that his lease covered a portion of my land.

(Objected to.)

Int. 23. What portion of the east strip did McPherson occupy?

Ans. Extending south from about the centre of the strip; my recollection is that he said his lease was for 150 feet. He occupied about that.

Int. 28. How did he occupy it?

Ans. He occupied it by a grain-elevator, said to be of 60,000 bushels capacity. The main building and attachments are a hundred and twenty-odd feet long and forty feet wide, and a wing 30 by 24; something more than half of this building is on my ground—the east strip. All of the wing is on this strip.

Int. 26. Was there any other occupation by McPherson in the
255 way of corn-cribs, scales, or anything of that kind?

Ans. I enumerated the buildings. There were two scales on the ground, and some detached cribs.

Int. 27. Who erected the wing of the McPherson warehouse?

Ans. Mess'rs Canda and Hinckley, to whom I gave personal notice that they were occupying my ground, and did it at their peril; that is, I gave the notice to M'r Hinckley before they built it, when they were making preparations for it.

Int. 28. How near the west line of East street does this wing come?

Ans. It comes to the line of the street.

Int. 29. Do those buildings erected by McPherson and Canda and Hinckley still remain, or have they been removed?

Ans. They still remain.

Int. 30. For what purpose is the so-called McPherson warehouse occupied, and has it been since it was built?

Ans. Occupied for storing and shipping grain, and as a grist-mill.

Int. 31. Is the mill used in connection with the railroad, or for general custom-work of the people of the adjoining county?

Ans. For general custom-work.

Int. 32. Well, now, sir, go next north from the McPherson warehouse, and what are the present occupations of this east strip?

256 Ans. The first 30 feet is a street laid out across it, laid out some time in 1873, extending across both strips from East street to West street; the next 50 feet leased to Homer Kenyon by me in 1873; prior to that time, in 1869 or '70, I erected an office for myself on that ground and occupied it as such or by lease to J. G. Strong until I leased to M'r Kenyon, when it (the building) was removed.

Int. 33. Before you erected the office you speak of, and after the lumber-yard had been removed by Webster, had that piece been occupied at all?

Ans. It was not occupied except temporary, if at all; I don't recollect about that.

Int. 34. About how much in length of the east strip next north of the crossing had Webster occupied as his lumber-yard?

Ans. About a hundred to 120 feet at a time.

Int. 35. And that occupation continued to about what time?

Ans. I am not sure; it was 1866 or 1867; I don't recollect the time exactly.

Int. 36. After Webster removed, was any portion of the land he vacated occupied by any one else; and, if so, by whom?

Ans. It was occupied by John B. Campbell and Charles S. Newell, I believe, for a warehouse, grain-warehouse, and corn-cribs.

Int. 37. Will you state, M'r Morgan, whether, upon further ex-

257 amination of the map before you, you can specify more accurately the extent of Webster's occupation before his removal?

Ans. For some month or two before his final removal to the north end I caused him to remove his lumber from about 60 feet, where the warehouse of Campbell and Newell was to be constructed and their corn-cribs.

Int. 38. Describe Campbell & Newell's warehouse and their corn-cribs.

Ans. The warehouse is 30 by 48 feet; a wing on the north end, for the power, of 30 by 30; and two corn-cribs, each 75 feet long and 12 feet wide.

Int. 39. What portion of the warehouse or elevator stands on the east strip?

Ans. About half of it, and the corn-cribs entirely.

Int. 40. Does that occupation still continue?

Ans. Yes, sir.

Int. 41. Is any portion of the strip adjoining East st. and west, north of the land leased Kenyon, now occupied; and, if so, how, and for how long?

Ans. I leased the 30 feet next north of Kenyon to Charles L. Palmer, upon which he moved his printing-office building; and, after occupying it for some time, he vacated it, and sublet the property for a shoe-store and barber-shop. The occupation of the ground I leased to Kenyon, the present occupation; there is the post-office building, a book-

258 store, an express office, a fruit-store, and a restaurant in it. Next north of M'r Palmer's piece I sold 30 feet front on East street; the next 30 feet north, that described it, I sold to Alvin Waite, upon which he erected a two-story building that is now occupied as a meat-market and a milliner's store. The up-stairs portion is a residence, I believe. Next north of the ground sold to Waite, I sold 25 feet front to Samuel W. Strong, together with the office that I erected originally, first spoken of, which was removed to that lot, where it now stands, and is occupied. Next north of that is 103 feet, occupied adversely to me by John B. Campbell's warehouse.

Int. 42. In connection with what warehouse does he occupy it, and how does he occupy it?

Ans. In connection with the warehouse and corn-cribs which I have already described, which were put up with notice from me of my ownership.

Int. 43. Do you know how Campbell and Newell claimed to occupy the land on which they erected their warehouse and corn-cribs at the time of their erection?

Ans. By leave from the Chicago & Alton Railroad Company.

Int. 44. Well, sir, next north of the Campbell & Newell warehouse property, how was the east strip occupied at the time of the erection of the warehouse, or about that time?

259 Ans. They were occupied by the cattle-yards at the time Campbell & Newell put up their warehouse.

Int. 45. Did the railroad company occupy any portion of the east strip north of Campbell & Newell's warehouse for any other purpose?

Ans. They did. About 150 or 200 feet next north of that they leased to Campbell & Newell was occupied by cattle-yards and cattle-shoots and a well.

Int. 46. Well for what purpose?

Ans. For supplying water to their locomotives. That well still remains there.

Int. 47. Well, sir, after the removal of the cattle-yards, who next occupied that strip where they had been?

Ans. Strong & Newell, since become J. G. Strong & Co.

Int. 48. Do you recollect when it was the cattle-yards were removed and Strong & Newell put up their warehouse?

Ans. It was in December, 1868.

Int. 49. What erections did they make?

Ans. They constructed a grain warehouse and elevator 30 by 58 and a wing 30 feet square for the power; also two corn-cribs, about 70 feet long each and 12 feet wide, and platform-scales. About half of the warehouse is on the east strip of my land, and both corn-cribs entire, and the scales.

Int. 50. Had Strong and Newell any notice of your claim at the time they made the erection?

260 Ans. They had; and the railroad company only leased in their case to the line of my property, (objected to,) and I gave them (Strong & Newell) permission to erect such portion of the building as came on my ground, and afterwards sold them the ground, or to Strong & Co., their successors.

Int. 51. You spoke of moving Webster up to the north end; describe the occupation of that portion of the strip from that time to the present.

Ans. I think it was occupied by M'r Webster and D'r Chalfant, and in May, 1867, R. K. Webster sold out to Canda & Hinckley, and it was occupied by Canda & Hinckley, the north end exclusively, till 1868, when D'r Chalfant took possession exclusively of a portion I had leased to him for his office; and early in 1869 Canda & Hinckley sold to David McWilliams, to be occupied till some time in the fall of 1869, I think, and one of the buildings, the lumber-office purchased by McWilliams from Canda & Hinckley, he sold in March, 1869, to Elisha B. Ketchum. The main building, which was used as a sash and blind store & residence, was moved off by M'r Webster at the time he sold to Canda & Hinckley. The building sold to Ketchum still stands there; the ground under lease from myself.

Int. 52. You may continue the history of the occupation of the east strip.

261 Ans. The 50 feet next north of the property sold to J. G. Strong & Co. I sold to John Hetzel Nov'r 11th, 1873; the remaining portion of the east strip, at the north end, being about 125 feet in length, is under lease to J. B. Parsons from myself, Parsons having purchased Chalfant's office-building and taken the lease; the first 50 feet sold to M'r Hetzel is occupied by a building, I think, for poultry and general marketing—general marketing building; next to this is a lease to Parsons, occupied as follows: tin-ware store and warehouse, office, and scales, and for agricultural implements; the next is a building that I don't know what the occupation is; on the Parsons lease, adjoining this, is the office of J. B. Parsons, and a store-room, general builders' and furnishing store, coal and lime and hardware used in building, sash and blinds; next adjoining this is a general grocery store; that is all, I believe.

Int. 53. When you speak of the occupation of portions of the east strip as a lumber-yard by McWilliams and Webster, do you mean that the lumber was merely received from the cars and taken away over the strips, or that it was stacked and piled on the premises and kept there until sold?

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Int. 53. When you speak of the occupation of portions of the east strip as a lumber-yard by McWilliams and Webster, do you mean that the lumber was merely received from the cars and taken away over the strips, or that it was stacked and piled on the premises and kept there until sold?

Ans. It was stacked and piled, with roads through it, as a lumber-yard, and kept there and sold off the piles—exclusive occupation.

Int. 54. Do you recollect a building occupied by section-hands
262 as a boarding-house; if so, where was it?

Ans. I do. It was located on the 100-feet strip which I conveyed to the C. & M. Railroad Company—about 75 feet north of the present station-house, on the east side of the 100-feet strip.

Int. 55. Did it extend beyond the 100-feet strip at all onto the east strip you now claim?

Ans. No, sir, it did not. Two other shanties were built by the company opposite my residence in the same way where the 100 feet was fenced. I complained of all those buildings, but only succeeded in getting this one removed—here in town.

Int. 56. You say you complained of the occupation by the last-mentioned shanties; to whom did you complain, and on what grounds?

Ans. Well, I complained to three successive administrations. I made a business of it to the administrations of the railroad company, Joel A. Matteson, James Robb, and R. B. Mason; I think I spoke to all of them that I had conveyed this 100 feet to them for railroad purposes, and the construction of these shanties on that ground was a violation of the terms under which the conveyance was made, besides being a nuisance to me personally at my residence in the town.

Int. 57. Where was your residence at that time?

263 Ans. At the south edge of the town-plat of Dwight, about 350 feet from the railroad, at the south end of the town-plat.

Int. 58. Was the occupation of the various grain-warehouses you have spoken of by individuals using them for their own benefit, or was it in any way connected with the operating of the railroad?

Ans. They were operated for their own benefit, and not by the railroad co. in any way; which is true of all the occupations on the east strip, except the time that they had a cattle-yard on a portion of the ground.

Int. 59. Will you state as fully as may be what occurred in reference to laying out the original town of Dwight by yourself, and between yourself and any other persons connected with it?

Ans. On the 6th of August, 1853, I conveyed the right of 100 feet wide through the northeast quarter of section 9, town 30, range 7, to the Chicago & Mississippi R. R. Co. for and in consideration of certain covenants to be performed by said railroad company. Prior to this day James C. Spencer conveyed to me the southwest quarter of the southeast ¼ sec. 4, 30, 7, containing 40 acres, more or less. Kersey H. Fell & Jesse W. Fell conveyed to me the northeast ¼ of the northwest ¼ of sec. 9, 30, 7, E., and John Lathrop conveyed to me the southeast quarter of the southwest ¼ of sec. 4, 30, 7.

264 Int. 60. For what purpose were these conveyances made?

Ans. To be laid out into town lots in connection with land of my own.

Int. 61. At the time they gave you deeds of these three parcels *of these three parcels* of land described, did you execute to them any written agreement in relation to that whatever?

Ans. No, sir; I did not.

Int. 62. What was the verbal understanding between yourself and these parties as to what should be done with the property of yourself and that which they conveyed?

Ans. I was to lay it out into a town and dedicate the streets and alleys to the public, and make sales of some of the property if I could, some

of the lots, and then upon a division of the property convey to each of the parties his proportion of the whole; and the division was made by M'r Fell and M'r McWilliams, I understand, and sent to me, and I made the conveyances as the division was made and paid the balance of the money in my hands, and made a final settlement.

Int. 63. In making the conveyances you speak of, did you pay any regard to the original ownership of the lands, or were the lots selected indiscriminately through the whole of the four forties?

Ans. They were selected indiscriminately through the whole of the property laid out into town lots, by selections, and then I under-
265 stood they cast lots to see who should have the particular parts, and it was reported to me, and I made the conveyances.

Int. 64. Do you recollect when that division was made, and the conveyances by you?

Ans. Well, it was in the fall of 1854, according to my recollection.

Int. 65. At the time these conveyances were made by you to these parties, was anything said; and, if so, what, in reference to their receiving the same in satisfaction of their claims?

Ans. They did receive them. The division was made by M'r Fell, and the conveyances were made by me, and all the parties received them in final settlement of the whole matter.

Int. 66. Were any fractions of the premises then held by you in these four 40-acres tracts remaining unconveyed in your hands; and, if so, what was the agreement between you and the other parties in reference to them?

Ans. There were fractions, and it was said by the parties that the conveyances to me gave me the title to those fractions, and that they gave them to me—well, as part consideration for my services—a sort of general throwing into the pool, as it were, on closing up a settlement.

Int. 67. Do these two 50-foot strips now in controversy make any part of the land which had been owned by the Fells, Lathrop, and Spencer?

Ans. No, sir; they never had any ownership any way in these strips.

266 Int. 68. Will you state what your intention was, when you made the plat of Dwight, in reference to these two fifty-feet strips?

(Objected to.)

Ans. I set them apart with a view to the ultimate needs of the railroad company at this station; and it was my intention, if the Chicago & Mississippi R. R. Company faithfully performed the covenants contained in my deed of the 100 feet to them, the performance of which materially affected the value of a large property that I owned adjoining the south end of the town, to convey to that company for a nominal sum of money the two strips of land, to the Chicago & Mississippi Company, for its use, but there never was any thought of dedicating the property. That reservation, in my own mind and for my own protection, was made because my interests were sacrificed by the failure of the Chicago and Mississippi Company to perform the covenants.

Int. 69. How much land did you own at that time south of and adjoining what you laid out as the town of Dwight?

Ans. Six hundred acres.

Int. 70. All your land adjoining the railroad right of way?

Ans. Yes, sir; for about a mile.

Int. 71. At the time the village of Dwight was laid out by yourself, were there any improvements there, whatever; and, if so, what?

Ans. There was a station-house building about where the present
267 one is located—a small station-house, built at Morris, brought to

the ground here, and put on the 100-feet strip conveyed to the C. & M. R. R. Co. It was occupied first for the civil engineers, afterwards as a passenger-station. That was the only building; the rest was unimproved prairie for miles around.

Int. 72. Will you tell me how the crossing over the grade of the railroad as originally constructed at the intersection of Mazon avenue and Franklin street, in Dwight, was, in reference to the natural surface of the soil?

Ans. I think there was about 2½ feet filling—about 2½ feet above the natural surface at the north end of the two strips.

Int. 73. How long was it after the laying out of the town of Dwight before suitable crossings were constructed at that point?

Ans. Almost immediately; as soon as the track was built, which was in 1854, I think, when the line of road was open for public travel through Dwight; but the crossing was built before that.

Int. 74. At the south end of the two strips, at the crossing of Chippeway street and Prairie avenue, how was the grade of the road in relation to the natural surface of the soil?

Ans. About 4 feet above the natural surface.

Int. 75. When was a suitable crossing over the railroad constructed there?

Ans. East and west of Chippeway street a crossing was made some time in 1867. The crossing north and south on Prairie avenue never has been made to this day.

268 Int. 76. Prior to the construction of the Chippeway-street crossing, what were the facilities for passing over the railroad at that point by teams?

Ans. It was impassable.

Int. 77. Did you ever call upon the railroad co. to construct a crossing at that point?

Ans. I called on the officers of the Chicago & Mississippi Railroad Co. several times to construct that crossing. I called upon the administration of Joel A. Matteson and upon James Robb, receiver, for the C. & M. Railroad was defunct. I called upon T. B. Blackstone, and finally the crossing was partially made, some time in 1867.

Int. 78. Will you produce any letter you have on that subject?

Ans. I produce the letter of Mr. Octave Chanute. Letter produced, & marked "Exhibit No. 1."

(Letter objected to.)

Int. 79. What official position did M'r Chanute then hold in connection with the Chicago & Alton R. R.?

Ans. Chief engineer.

Int. 80. Do you know his handwriting?

Ans. I do.

Int. 81. Do you know whether that is or is not his handwriting?

Ans. It is his handwriting.

Int. 82. What effect had the construction of the crossings at the north end of these two strips and the omission to construct crossings at
269 the south end upon the early location and settlement of the town?

(Objected to.)

Ans. It forced the growth of the town—the center of it—probably one thousand feet further north from the main body of my property than it would have been if the crossings at each end had been constructed at the same time.

Int. 83. How was the land naturally near the north and the south ends of the two strips as to its desirableness for occupation for a town?

Ans. It was very much more desirable at the south end; comparatively high ground, rolling, and with good drainage. At the north end the ground was low and wet, and subject to overflow.

Int. 84. As a matter of fact, however, at which end did the business of the town center?

Ans. It centered about the north crossing.

Int. 85. Since the crossing has been put in at Chippeway street, has any change occurred in that respect?

Ans. Yes. The town has grown up and the business is become more uniformly distributed on the line of the depot-grounds, and extending south.

Int. 86. What effect, if any, upon the value of your property adjoining the south part of the town of Dwight had this omission to put these southern crossings?

Ans. Well, up to the time of making the crossings in 1867 it must
270 have repressed the value of my property $25,000 or $30,000; that , I might have sold it into town property and realized for it that sum if the covenants had been kept.

Int. 87. Were these two strips, or either of them, used by the general public in any way except in crossing over them to get to and from the railroad?

Ans. No, sir; they were not.

Int. 88. In loading and unloading corn, lumber, stone, &c., to and from the cars, were either of these two strips occupied at all?

Ans. No, sir; they were not. There was plenty of room without.

Int. 89. At the time these grain-warehouses of which you have been speaking were constructed, how many tracks were there on the land conveyed by you to the R. R. company in Dwight, being 100 feet wide?

Ans. Two tracks and side track to the warehouses.

Int. 90. What was the distance from the east rail of the east side track to the east line of the 100 feet conveyed to the railway co.?

Ans. 23½ feet.

Int. 91. If the warehouses spoken of had occupied any part of the 100-feet strip of the railroad ground, how could persons desiring to receive or deliver freight get access to the side track without crossing the east strip?

Ans. By a passage-way of more than 18 feet in the clear outside of the side of a car standing on the side track on the 100 feet conveyed
271 to the railroad company, extending from Mazon avenue to Chippeway street, intersected by the cross-street afterwards laid off thro' the center, giving three outlets and abundant room for teams to drive in and load and unload and pass each other.

Int. 92. Has there ever been between yourself and the Chicago & Alton Railroad Co. any agreement or understanding in regard to the conveyance to them of any interest in these two strips, or either of them?

Ans. No, sir; there never has been.

R. P. Morgan, j'r, cross-examined:

Int. 1. What was your occupation in 1854?

Ans. I was civil engineer.

Int. 2. Where did you reside at that time?

Ans. In Bloomington, Illinois.

Int. 3. By whom were you employed at that time?

Ans. I was employed by the C. & M. Railroad Co.

Int. 4. How long did you continue in their employ?

Ans. I was employed from May, 1852, until August, 1855, by the Chi-

cago & Miss. R. R. Co.; until August, 1854, (four,) as resident engineer on construction, and on the first of August, 1854, I took charge of the road as general superintendent.

Int. 5. Did your connection with the road cease in 1855?

Ans. No, sir; I continued in the employ of the lessee of the road, M'r Hamilton Spencer, as general superintendent, until the fall of the following year, 1856.

272 Int. 6. What business did you then engage in?

Ans. The following year I came to Dwight and commenced farming; improving property I had at Dwight.

Int. 7. How long did you continue so engaged?

Ans. Substantially so until 1860.

Int. 8. Did you have any business office during that time or any part of it?

Ans. Only at my residence.

Int. 9. Your residence was in Dwight during that time?

Ans. Yes, sir; about 500 feet from the south end of the premises in controversy.

Int. 10. What did you then do?

Ans. In 1861 I went to Wilmington to reside, & was engaged as civil engineer at that place.

Int. 11. Have you ever since continued to reside at Wilmington?

Ans. I returned to Dwight in 1866, I believe.

Int. 12. How far is it from Dwight to Wilmington?

Ans. 21 miles.

Int. 13. Did you or not frequently visit Dwight?

Ans. Not very frequently.

Int. 14. How frequently?

Ans. Perhaps once in 3 months.

Int. 15. Do you still have property interests in the neighborhood of Dwight?

Ans. Yes, sir.

Int. 16. After your return to Dwight, in 1866, how long did you continue to reside there?

273 Ans. Until 1870.

Int. 17. What was the occupation of M'r Spencer, whom you have named as being interested with you in the original town-plat?

Ans. A civil engineer.

Int. 18. In whose employ was he in 1853 & 1854?

Ans. Chicago & Mississippi Railroad Co.

Int. 19. What were his duties?

Ans. Resident engineer in charge of the location and construction of north end of the line.

Int. 20. What was Lathrop's business?

Ans. He was principal assistant engineer on the road, located at Springfield.

Int. 21. Did the Fells have any connection with the road at that time?

Ans. I think Jesse Fell procured some right of way for the company. Kersey Fell had no connection with the company.

Int. 22. The laying off the town of Dwight was a joint enterprise, as I understand your testimony, and the three 40-acre tracts you mention were conveyed to you in furtherance of that enterprize?

Ans. Yes, sir.

Int. 23. What was the respective shares or interests of the several parties?

Ans. One quarter, except Fells, who together had a quarter.

Int. 24. That was the arrangement when the land was conveyed to you, was it; the three forties?

Ans. Yes, sir.

274 Int. 25. Were the proceeds of the lots sold & remaining unsold partitioned upon that basis?

Ans. Yes, sir; they made the partition themselves. I conveyed as they made it.

Int. 26. In making the partition, as I understand your statement, the unsold lots were divided into four parcels, and these lots were assigned to the respective parties in interest by drawing lots. Is that correct?

Ans. Yes, sir. That is the way I understood it was done. It was so reported to me by M'r Fell, and all the parties accepted the division as made, and I made the conveyances accordingly.

Int. 27. In your direct testimony you spoke of some fractions; what did you mean by fractions?

Ans. Well, the 160 acres that was laid out—well, the exterior line of the 160 acres was supposed of course to contain just the amount of land, but in the piece that M'r Spencer conveyed, the piece M'r Lathrop conveyed, and in that of M'r Fell, there was a small excess, so that when the exterior street of the town was laid out it left a strip outside, a strip or fraction lying within the forties then already conveyed; and that is what I had reference to as the fractions.

Int. 28. This surplus above the 160 acres or the 40 acres was not divided between the parties, as I understand you, but was left in your hands as part compensation for your trouble?

275 Ans. Yes, sir; that was the loose talk about it at the time.

Int. 29. It was spoken of at the time?

Ans. Yes, sir.

Int. 30. Did you receive any other compensation for your trouble or services?

Ans. No, sir.

Int. 31. The town plat or subdivision was made by you, was it not?

Ans. Well, yes; it was made under my instructions by Charles Morris. I made a rough sketch of the plat and named the streets and sent it to him; he was the draughtsman, and had him make the map for the lithographer.

Int. 32. In whose employ was Morris at thattime?

Ans. Chicago & Mississippi R. R. Co.

Int. 33. Was the plat made in the office of the co.?

Ans. I suppose so.

Int. 34. Did you receive any rent from Clarkson?

Ans. No, sir; I did not, further than this, a sort of general good feeling that he would do little jobs for me, but no direct rent.

Int. 35. When did you first receive rent from any person for any portion of the property in controversy?

Ans. In 1868. It may *be* have been in 1867. I had demanded rent some time prior to that from several occupants, McWilliams & others.

276 Int. 36. When and of whom did you demand rent prior to that time?

Ans. Of M'r Webster, in 1865; of M'r McWilliams, I think, in 1865 or 1866; of McPherson, in 1865; it may have been before that. I guess that was all of whom I demanded. That was all the adverse occupancy. I understood M'r McPherson died a number of years ago.

Int. 37. When did McPherson leave Dwight?

Ans. He never lived at Dwight, to my knowledge.

Int. 38. When did you see him on the cars and tell him you owned the east strip?

Ans. I think it was in 1864.

Int. 39. Do you know what time of year?

Ans. No, sir; I don't.

Int. 40. Do you know when the foundations of the McPherson elevator was put in?

Ans. They were put in in the first place by M'r McWilliams, as I understood, under a lease from the Chicago & Alton Company, some time in 1861. A year or two afterwards I understood he sold to McPherson.

Int. 41. When did you tell Campbell you had an interest or owned the premises in controversy?

Ans. It was in the fall of 1866, at the time he obtained his lease.

Int. 42. Where was he at the time you told him?

Ans. He was on the ground where the warehouse was being constructed.

277 Int. 43. Side-track on the west strip completed in 1866, I think you said?

Ans. In the winter of 1867 and 1868.

Int. 44. When did you first sell any portion of either strip?

Ans. Immediately after the decision of the supreme court in my favor; in January, 1872, I think.

Int. 45. Had you made any effort to sell any portion of it before that time?

Ans. No, sir; I had not; because at the time I was ready to sell the C. & A. Railroad had set up an attempt, through others, to declare the property dedicated.

Int. 46. How soon after the town-plat was made did you commence selling lots?

Ans. Almost immediately.

Int. 47 How long did you continue sales?

Ans. Up to the present time.

Int. 48. Had you lots on the market all the time?

Ans. Yes, sir.

Int. 49. Your statement of the way in which business might be done in regard to getting to and from the cars on the 100 feet strip conveyed is purely hypothetical, is it not?

Ans. No, sir; not purely hypothetical, for the reason that teams may pass from the streets in and out, even as the warehouses now are. Although they cannot pass the entire length of the strip of land, they do do it by turning on the track when they come to those warehouses.

Int. 50. Has that been the customary or usual manner of doing business?

278 Ans. That has been the way in all cases where I have taken possession of my property; they have used that way as being more convenient, more ready access, than the other.

Int. 51. The elevators have been used for shipping grain on the railroad, have they not?

Ans. Yes, sir.

Int. 52. Most of the grain is shipped from this point through the elevators?

Ans. I presume it is. I believe it is, though there is a great deal shipped by the farmers themselves.

Int. 53. You speak of having leased a piece at the north end of the west strip in 1866; how much rent did you receive for it?

Ans. I received $10 a year for a small piece—a nominal rent. The occupation was in summer time.

Int. 54. You state that you sold a portion of the east strip to Strong & Co.; what did you receive for it?

Ans. I received, I think, $2,250 for 150 feet.

Int. 55. When did you receive it?

Ans. At the time I sold it, except $1,000, which I am informed & believe was a deferred payment.

Int. 56. What was the date of the sale?

Ans. About July, 1873.

Int. 58. From 1854 to 1863 did not passengers go across these strips, for the most part, to get to the depot?

Ans. Of course. It was most convenient and the shortest cut.

Int. 59. In shipping and receiving freight, did not trains cross these strips?

279 Ans. Yes, sir.

Int. 59. You have leased, you said, 125 feet for the coal-yard and wagon-shop at the north end of the west strip; when did you make that lease, and how much rent did you receive?

Ans. Fifty feet I leased in December, 1873, and 75 feet I leased this year at $1.50 per foot per annum, parties paying all taxes and assessments.

Int. 60. Are those two strips centrally located in regard to the business of the town?

Ans. Yes, sir; I think they are. Have not always been so. For ten years, in the early history of the town, the centre of the business was at the north end of these strips and west side; after 1867 it began to grow around and make them centrally located.

Int. 61. In the partition between yourself and Fells, Spencer, & Lathrop, no reference was made to these strips?

Ans. No, sir; the strips had nothing to do with it.

Redirect examination:

Int. The map you hold in your hand, will you say whether it is or is not a correct map of the premises in controversy, and whether or not it was made from an actual survey?

Ans. It is a correct map, except as far as regards more recent buildings.

(Produces map marked "Exhibit No. 2.")

Int. When you were resident engineer during the construction of the Chicago & Mississippi Railroad, what was the division under your charge in 1853 and 1854?

Ans. I had charge of the line from Bloomington north and south 30 miles; north of Bloomington 30 miles, and south of Bloomington 30 miles.

280 Int. Where was the northern terminus?

Ans. Between Pontiac, Lexington, at Rook's Creek, near what is now called Ocoya, about 27 miles of Dwight.

Int. Had you any connection with the location of the line of the road north of Rook's Creek through Dwight?

Ans. None whatever.

Recross-examined:

Int. Who did have charge of the location of the railroad through Dwight?

Ans. H. A. Gardner.

Int. No one else?

Ans. No one else. James C. Spencer was his assistant and run the line for him; Mr. Gardner made the locations; he was the engineer in charge of the road during its construction.

RICH. P. MORGAN, J'R.

(Endorsed:) Filed June 2d, 1875. W'm H. Bradley, cl'k.

281 *Deposition, of James G. Strong, W. H. Bradbury, L. G. Pearse, Joseph I. Dunlop, and David M. Williams.*

JAMES G. STRONG sworn.

Direct examination by defendant:

Int. 1. Give your name, age, and residence.

Ans. James G. strong; age, 38; Dwight, Ill's; banker and real-estate agent.

Int. 2. How long have you lived in Dwight?

Ans. Fourteen or fifteen years.

Int. 3. During that time have you been acquainted with the two strips of land in controversy?

Ans. Yes, sir.

Int. 4. Were you one of the firm of Strong & Newell that built the grain-warehouse partly on the strip?

Ans. I was.

Int. 5. At the time you commenced the erection of that elevator did you know of M'r Morgan's claims to the property?

Ans. Yes, sir.

Int. 6. Do you know how these two strips have been occupied, since you have lived in Dwight, from time to time?

Ans. I do.

Int. 7. Will you state, in a general way, how the two strips were situated as to occupation when you first knew them.

282 Ans. Part of the east strip was occupied by the railroad company for a cattle-yard; other part of it by a small warehouse, owned, think, by the Spencers, and part of it occupied by McWilliams for lumber. I suppose that is the extent of the occupation when I first knew it.

Int. 8. Did you afterwards know of its being occupied by other persons for private use?

Ans. Well, it has been occupied since by different parties for warehouses and for lumber and corn-cribs, and latterly by parties who have shops and stores on it.

Int. 9. The lumber-yards which were upon these strips, were they as a mere temporary place for storage for lumber, or was it piled up for sale?

Ans. The lumber was stacked as it is usually stacked in lumber-yards, and sold from the piles from time to time.

Int. 10. Do you recollect ever calling upon McWilliams, as agent for M'r Morgan, to demand rent for any portion of the east strip occupied by him?

Ans. Yes, sir; about the year 1865—'4 or '5.

Int. 11. How came you to do so?

Ans. I made a demand at the request of M'r Morgan. He was then residing in Wilmington, and wrote to me.

Int. 12. What has become of that letter?

Ans. Destroyed in a fire at my office.

Cross-examined by complainant:

283 Int. 1. Were you M'r Morgan's agent here at that time?

Ans. I was M'r Morgan's partner in real-estate business, and acted as his agent at his request.

Int. 2. Were you living here at that time?

Ans. I was.

Int. 3. When did you first receive from him instructions to demand rent from any one for the use of any part of the premises?

Ans. In the year 1865.

Int. Had you been his agent prior to that time?

Ans. Yes, sir.

Int. In 1865 was the first intimation you had from M'r Morgan in regard to those two strips of land, as I understand?

Ans. The first request to make dēmand for rent. He had talked to me previous to that time, in the year 1862, at the time they commenced building the large warehouse. He told me then that he owned these strips.

Int. What time in 1862 did you first learn from M'r Morgan that he owned these strips?

Ans. I don't know exactly. I became acquainted with Mr' Morgan in 1861.

Int. When did you put up the crib on the west strip?

Ans. In 1866 and 1867; at that time there was nothing on the west strip except what was used by the railroad comp'y. That is correct.

284 Redirect examination:

Int. What part of the east strip now in controversy, except the crossing of 30 feet near the middle, is now occupied by private persons to the exclusion of the public and every one else but themselves?

Ans. All of it, I believe.

Deposition of W. H. Bradbury.

Int. 1. Please state your name, age, residence, and occupation.

Ans. William H. Bradbury; age, 45; residence, Dwight; occupation, attorney.

Int. 2. How long have you lived in Dwight?

Except three years in which I was in the Army, I have lived in Dwight 15 years.

Int. 3. Have you ever held any official position in the town of Dwight? If so, what?

Ans. I succeeded M'r Strong as clerk to the board of trustees, I think, in the year 1866. I continued in that capacity about two years, I believe. I have been town-clerk for several years; two or three years clerk of the township; three years I must have been, altogether.

Int. 4. How long have you known the two strips of land in controversy in this case?

Ans. Since 1865. I would like to say, further, that of course I
285 know the land about here, but I didn't know these two strips as in controversy till 1865.

Int. 5. Do you know of M'r Morgan's claiming rent from David McWilliams for the occupation of portions of the east strip; and, if so, when was the claim made?

Ans. I do. I made the demand for M'r Morgan, myself, on one occasion, and made a memorandum at the time. I think M'r Morgan has

that memorandum. I have no recollection of asking M'r McWilliams for any rent for the east strip prior to 1868.

Int. 6. During the time you have known these two strips in controversy, have you known any of the public officers or the authorities of the town of Dwight to claim any interest in them?

(Objected to as incompetent.)

Ans. I have not.

Cross-examination by M'r Wilson:

X-int. 1. You say the first time you demanded rent of M'r McWilliams was in 1868?

Ans. No, sir; I didn't say so.

X-int. 2. When did you first demand rent of Mr. Williams?

Ans. I think in 1870.

X-int. 3. 1870?

Ans. 1870 or 1871.

X-int. 4. For whom?

Ans. For M'r Morgan.

X-int. 5. When did you first know that M'r Morgan claimed to own the premises in controversy?

Ans. In 1866, I think.

W'M H. BBADBURY.

286 *Deposition of Joseph I. Dunlop.*

JOSEPH I. DUNLOP sworn:

Int. 1. State name, age, &c.

Ans. Joseph I. Dunlop; age, 45; Dwight, Ill.; occupation, attorney at law.

Int. 2. How long have you lived in Dwight?

Ans. I moved to the village in the winter of 1866–'7, previous to which I lived about three miles from town.

Int. 3. Do you know the two strips in controversy?

Ans. Yes, sir; I have in one sense known them no longer than the time I moved to Dwight; in another sense I have known them since 1856.

Int. 4. What official position, if any, do you hold in the town of Dwight?

Ans. Attorney for the corporation.

Int. 5. During the time you have known these two strips, & since you have lived in Dwight, have you ever known or heard of any claim on the part of the public, or of the authority representing the public, to the strips or any part of them?

Ans. I have heard individuals claim that it belonged to the public. I never heard that, however, until after the time of the arbitration of Drummond & Davis—after the decision being rendered.

Cross-examination waived.

287 Adjourned, by agreement, to 7 o'clock p. m. of the same day.

LEMUEL G. PEARRE sworn:

Int. What is your name, residence, &c.?

Ans. Lemuel G. Pearre; age, 34; residence, Dwight; occupation, attorney at law.

Int. How long have you lived in Dwight?

Ans. Eleven years.

Int. Were you in 1869—April, 1869—clerk of the town of Dwight?

Ans. I think I was.

Int. Does this memorandum refresh your recollection? (producing paper.)

Ans. I think I was clerk of the board of this town in April, 1869.

Int. Do you recognize the endorsement on that paper, signed in your name, as your handwriting—in the paper you hold in your hand?

Ans. I do.

The paper in question offered in evidence and marked "Exhibit No. 3."

(Objected to by complainant's counsel as incompetent and irrelevant.)

Int. You have read the paper, have you, M'r Pearre?

Ans. I have read the paper and endorsement.

Int. Do you know where the book of records of the town board of Dwight of that date (1869) is, or whether it is in existence?

288 Answer. I think that book of records is in Pontiac, in the office of the circuit clerk.

Int. It is not in the town clerk's office?

Ans. I don't know whether it is there or not.

Int. Have you any recollection as to whether or not the resolution in this paper was passed by the board?

(Objected to.)

Ans. I have not; I have no recollection.

Int. Why do you suppose that book is in Pontiac?

Ans. I have been looking at some memorandums in my office since my attention was called to the fact that I should be required to testify; that leads me to believe that those records were in my office after the fire occurred and burnt my office in 1870, and I have a recollection that those records were used in evidence in prosecuting suits that were brought by the town board when I was their clerk. I have no recollection of the records ever coming into my hands after being used in evidence in those cases.

Cross-examination waived.

It is agreed between the parties that if the complainant shall give further evidence of the occupation of the premises in question, then the defendant Morgan shall have the right to give further evidence on the same subject.

289 DAVID MCWILLIAMS sworn:

Int. 1. Name, age, occupation, & residence?

Ans. David McWilliams; 40; Dwight, Ill.; banker & merchant.

Int. 2. You have been already examined in this case in Chicago, I think?

Ans. Yes, sir.

Int. 3. Were you one of the parties to a suit in chancery in the Livingston County circuit court, wherein David McWilliams & James H Hagerty were plaintiffs & R. P. Morgan, j'r, was defendant?

Ans. I was.

Int. 4. Did that controversy relate to the same two strips of land which are in controversy in this suit?

(Objected to as incompetent.)

Ans. I suppose that "Yes" would answer the question.

Int. 5. At whose instigation and at whose expense was that litigation carried on on the part of the plaintiff?

(Objected to.)

Ans. Chicago & Alton Railroad Co.

Int. There was an appeal taken in that case from the decision of the circuit court of Livingston County to the supreme court of the State?

290 Ans. There was.

Int. By whom was that appeal taken & prosecuted?

Ans. Chicago and Alton Railroad Co.

Int. Did you visit Buffalo at a time shortly before this suit was begun, and see M'r's Lathrop and her daughter, the widow and daughter of John Lathrop?

Ans. I did.

Int. Did you procure from them a conveyance, by quitclaim, of their interest in the two strips of land in controversy?

(Objected to.)

Ans. I did.

Int. By whose procurement and at whose expense did you go to Buffalo?

Ans. All the expense there was to it was my own. They furnished me passage, the Chicago & Alton Railroad Co. did. The expense part of it I paid myself.

Int. How much, if anything, did you pay M'r's Lathrop and her daughter for releasing their interest in the property?

(Objected to.)

Ans. Nothing; no consideration.

Int. There was no agreement or promise to pay anything?

(Objected to.)

Ans. No, sir.

Int. Then the deed was entirely without consideration, was it?

(Objected to.)

291 Ans. As far as money consideration it was. There were other considerations that induced her to give a deed. A letter from M'r James Spencer had something to do with it.

Cross-examination waived.

(Endorsed:) Filed June 2d, 1875. W'm H. Bradley, cl'k.

293 There was also presented in evidence in this behalf a photographic copy of the lands in question, including the lands deeded to the Chicago & Alton R. R. Co.; a letter from O. Chanute to *to* Rich'd P. Morgan, j'r, and a resolution of the town board of Dwight, and a copy of the bill, answer, and decree in a certain case in the circuit court *court* of Livingstone Co., Illinois, in which David McWilliams and James H. Hagerty were complainants, and Richard P. Morgan, j'r, was defendant, which was all the evidence offered in the case.

Letter of O. Chanute.

CHICAGO, ALTON & S'T LOUIS LINE,
Engineer's Office, Chicago, Nov. 27, 1866.

R. P. MORGAN, j'r:

D'R SIR: Yours of 16th was duly received. We find upon investigation that we are bound in equity to make the crossing of the south streets at Dwight, and, although considering it very objectionable and likely to prove a serious hindrance to our business at that station, I have given instruction to have the work done as soon as possible.

Resp'l'y,

O. CHANUTE.

294 *Resolution of the town board of Dwight.*

Resolved, That the two strips of land a'jacent to the railroad-depot grounds, about which there has grown up a contention between R. P. Morgan, j'r, the railroad, and others, have never been considered as belonging to the public; that no suits regarding said strips have been counselled or authorized by this board, and that no costs or expenses will be paid, but that the two parks have been improved by the town trustees, and considered as public grounds, and a committee be appointed to confer with R. P. Morgan, j'r, and obtain a deed to said parks for the town of Dwight.

(Endorsed:) Passed Apr. 5, 1869. L. G. Pearre, clerk.

[Here follows diagram, marked page 295.]

296 STATE OF ILLINOIS,
Livingston County, ss:

To Hon. Cha's H. Wood, presiding judge of said court, in chancery sitting:

Humbly complaining, respectfully represent unto your honor, your orators, David McWilliams and James H. Hayerty, inhabitants and citizens of the town of Dwight, in said county, for themselves as well as the public, that on or about January 30th, A. D. 1854, one Richard P. Morgan, j'r, then of McLean County, Ill's, did, under the provisions of the statute of the State of Illinois, lay off into blocks, lots, streets, alleys, &c., the southwest q'r of the southeast quarter of section No. four, and the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter of section No. nine, (9,) township No. thirty (30) north, range No. seven (7) east 3rd P. M., in said county, to be known and called the town of Dwight. That a plat of said lands so laid off was duly acknowledged and certified & recorded in book D of the records of said county, at page 389, 390, & 391, reference to which is hereby made, and the said plat, &c., made part of this bill.

Your orators further show that prior to the laying off of said land said Morgan conveyed to the Chicago Mississippi Railroad Company
297 a strip of land one hundred feet in width, being fifty feet on each side of the center of the road-bed of said company, (by deed dated August 6, 1853, and recorded in book D of deeds of the records of said county, at page No. 230, reference being had thereto, & said record being made a part of this bill,) through said lands so laid out as aforesaid, the portion of which land will appear by reference to said plat.

Your orators would further show that by said plat said Morgan laid off as part of the depot-grounds in said town and dedicated to the public two certain pieces of ground, each of the width of fifty feet on either side of the land of the C. & M. R. R. Co., as well as to location, fully appear by reference to said plat, & that on the southeasterly side of said railroad-land being more particularly described as follows: Being bounded on the southeast side by East street, on the south side by Chip'eway street, on the northwest by said railroad co.'s land, and on the northeast by Franklin street. Your orators would show
298 that not only was an express dedication made to the public by said Morgan by said plat, but that the same was accepted and used by them, and that said Morgan, with a full knowledge of said facts, acquiesced in said acceptance for the period of about nine (9) years without objection, as they verily believe. That said strip of fifty feet wide, so described as above, was during all that time used more or less

by the public, & particularly by the business men of said town, and by the trading and unloading of grain, lumber, & merchandise on & from the trains on said railroad, and that the use by the said public has never been abandoned, as it has been and still is used for the purposes aforesaid, and particularly for the loading of grain into cars upon the track of said railroad. That orators are owners by purchase running back to said Morgan as grantor of a large amount of real estate fronting and abutting upon said depot grounds or strip of land aforesaid,
299 and purchased since said dedication, and with especial reference to said recorded plat. Orator McWilliams shows that he is the owner of lots No. 5, 6, 7, 10, & 11, in block 18 of said town, the position of which will appear by said plat. That he has been in possession of lot No. 5 since A. D 1860; of lots 6 & 7 since April, A. D. 1855; lots 10 & 11 since 1868. Orator Hayerty shows that he is the owner of lots 8 & 9 in said block 18, except 30 feet off the south side of lot No. 9, and that he has been in possession of said lots since about 1856. That orators are business men of said town, as merchants doing business on part of said block 18, their business houses fronting said detached strip of ground. Your orators further show that said Morgan, disregarding his said dedication and the acceptance of the same by the public, (orators among them,) is about to erect a building or buildings upon said strip of ground above described, and is assuming acts of ownership and the right of exclusive use to said tract adverse to the rights of orators
300 & of the general public, as well as abridgeing the rights & privileges of orators to said lots as purchased and owned by them.

Orators further show that the Chicago & Alton Railroad Company are now operating and control'ing the road formerly owned and control'ed by said Chicago & Mississippi Railroad Company, & have succeeded to their rights, and charge that in said dedication to *to* the public was a right of user in said railroad co. & its successors or assigns, & charge that by reason of the said assumption of the right of exclusive use to said tract by said Morgan not only is such right of user interfered with and abridged, but the rights of the public & business men also, by depriving them of the most available points in said depot-grounds of loading and unloading cars on said road; and, further, that a large proportion of the business of said town is transacted on the easterly side of said railroad, and by said assumption the business of said public, your orators among them, is materially interferred
301 with & abridged, & the value of the property fronting on East street aforesaid materially depreciated, particularly if said Morgan proceed with the erection of the said proposed building or buildings, and specially orator Hayerty, as the building about to be erected is almost immediately in front of his place of business.

Your orators therefore pray that a temporary injunction issue restraining said Morgan from doing any act or thing or causing the same to be done in the way of proceeding to or with the erection of any building or structure, or in any way assuming the right to the exclusive use of said tract or strip of ground above described, to wit, the strip of ground between said company's ground & East street, being fifty feet wide; that process issue as usual; that defendant answer this bill, but not under oath, that being expressly waived; that on the final hearing hereof the injunction be made perpetual, & for such other & further relief as may be necessary in equity.

DAVID McWILLIAMS.
JAMES M. HAYERTY.

PAYSON & PEARCE, *Sol'rs.*

302 STATE OF ILLINOIS,
Livingston County, ss :

David McWilliams, one of the above named complainants, being duly sworn, says that he has heard the same read & understands the *the* same, & that the facts stated therein as to his own knowledge are true in substance & fact, and those stated on information and belief are true, as he verily believes.

DAVID McWILLIAMS.

Subscribed & sworn before me this 12 day of Feb'uary, A. D. 1869.
JOSEPH H. CULVER,
Co. Judge.

Let an injunction issue according to the prayer of the annexed bill upon complainants giving bond to def'ts in the sum of one hundred dollars, with L. E. Payson as security.

JOSEPH F. CULVER,
Co. Judge.

Fee, $3.00.

303 In chancery, of May term, 1869.

STATE OF ILLINOIS,
Livingston County, ss:

RICHARD P. MORGAN
ad's
DAVID McWILLIAMS & JAMES H. HAYERTY.

The answer of Richard P. Morgan, j'r, to the bill of complaint of David McWilliams & James H. Hayerty.

This defendant, saving & reserving to himself all benefit of exception which may be taken to said bill of complaint for its many uncertainties & imperfections, for answer thereto or to such parts thereof as he is advised it is material for him to answer, says that he is advised by counsel that the said bill and the facts therein set forth do not entitle said complainants to the relief therein prayed for, nor to any other relief. And this defendant claims the same benefit of this objection as if he had for that cause demurred to the said bill or otherwise properly insisted therein.

This defendant admits that on or about January 30th, A. D.
304 1854, he did lay off into lots, block, and streets, & alleys, the lands in said bill mentioned, to be known as the town of Dwight, and that a plat of said land was duly acknowledged, certified, and recorded, as in said bill stated, to which plat or the record thereof this defendant refers for greater particularity and makes the same a part of this answer.

This defendant denies that by said plat or in any other way he dedicated to the public or in any manner parted with any right or interest in any part of said lands except such as by the said plat were laid out *and* for streets & alleys in said town. This defendant admits that he conveyed to the Chicago & Mississippi Railroad Co. a strip of land one hundred feet wide by deed, substantially as set forth in said bill, reference being had to the record of said deed for greater particularity, which is hereby made a part of this answer.

by the public, & particularly by the business men of said town, and by the trading and unloading of grain, lumber, & merchandise on & from the trains on said railroad, and that the use by the said public has never been abandoned, as it has been and still is used for the purposes aforesaid, and particularly for the loading of grain into cars upon the track of said railroad. That orators are owners by purchase running back to said Morgan as grantor of a large amount of real estate fronting and abutting upon said depot grounds or strip of land aforesaid,
299 and purchased since said dedication, and with especial reference to said recorded plat. Orator McWilliams shows that he is the owner of lots No. 5, 6, 7, 10, & 11, in block 18 of said town, the position of which will appear by said plat. That he has been in possession of lot No. 5 since A. D 1860; of lots 6 & 7 since April, A. D. 1855; lots 10 & 11 since 1868. Orator Hayerty shows that he is the owner of lots 8 & 9 in said block 18, except 30 feet off the south side of lot No. 9, and that he has been in possession of said lots since about 1856. That orators are business men of said town, as merchants doing business on part of said block 18, their business houses fronting said detached strip of ground. Your orators further show that said Morgan, disregarding his said dedication and the acceptance of the same by the public, (orators among them,) is about to erect a building or buildings upon said strip of ground above described, and is assuming acts of ownership and the right of exclusive use to said tract adverse to the rights of orators
300 & of the general public, as well as abridgeing the rights & privileges of orators to said lots as purchased and owned by them.

Orators further show that the Chicago & Alton Railroad Company are now operating and control'ing the road formerly owned and control'ed by said Chicago & Mississippi Railroad Company, & have succeeded to their rights, and charge that in said dedication to *to* the public was a right of user in said railroad co. & its successors or assigns, & charge that by reason of the said assumption of the right of exclusive use to said tract by said Morgan not only is such right of user interfered with and abridged, but the rights of the public & business men also, by depriving them of the most available points in said depot-grounds of loading and unloading cars on said road; and, further, that a large proportion of the business of said town is transacted on the easterly side of said railroad, and by said assumption the business of said public, your orators among them, is materially interferred
301 with & abridged, & the value of the property fronting on East street aforesaid materially depreciated, particularly if said Morgan proceed with the erection of the said proposed building or buildings, and specially orator Hayerty, as the building about to be erected is almost immediately in front of his place of business.

Your orators therefore pray that a temporary injunction issue restraining said Morgan from doing any act or thing or causing the same to be done in the way of proceeding to or with the erection of any building or structure, or in any way assuming the right to the exclusive use of said tract or strip of ground above described, to wit, the strip of ground between said company's ground & East street, being fifty feet wide; that process issue as usual; that defendant answer this bill, but not under oath, that being expressly waived; that on the final hearing hereof the injunction be made perpetual, & for such other & further relief as may be necessary in equity.

DAVID McWILLIAMS.
JAMES M. HAYERTY.

PAYSON & PEARCE, *Sol'rs.*

302 STATE OF ILLINOIS,
Livingston County, ss :

David McWilliams, one of the above-named complainants, being duly sworn, says that he has heard the same read & understands the *the* same, & that the facts stated therein as to his own knowledge are true in substance & fact, and those stated on information and belief are true, as he verily believes.

DAVID McWILLIAMS.

Subscribed & sworn before me this 12 day of Feb'uary, A. D. 1869.
JOSEPH H. CULVER,
Co. Judge.

Let an injunction issue according to the prayer of the annexed bill upon complainants giving bond to def'ts in the sum of one hundred dollars, with L. E. Payson as security.

JOSEPH F. CULVER,
Co. Judge.

Fee, $3.00.

303 In chancery, of May term, 1869.

STATE OF ILLINOIS,
Livingston County, ss:

RICHARD P. MORGAN
ad's
DAVID McWILLIAMS & JAMES H. HAYERTY.

The answer of Richard P. Morgan, j'r, to the bill of complaint of David McWilliams & James H. Hayerty.

This defendant, saving & reserving to himself all benefit of exception which may be taken to said bill of complaint for its many uncertainties & imperfections, for answer thereto or to such parts thereof as he is advised it is material for him to answer, says that he is advised by counsel that the said bill and the facts therein set forth do not entitle said complainants to the relief therein prayed for, nor to any other relief. And this defendant claims the same benefit of this objection as if he had for that cause demurred to the said bill or otherwise properly insisted therein.

This defendant admits that on or about January 30th, A. D.
304 1854, he did lay off into lots, block, and streets, & alleys, the lands in said bill mentioned, to be known as the town of Dwight, and that a plat of said land was duly acknowledged, certified, and recorded, as in said bill stated, to which plat or the record thereof this defendant refers for greater particularity and makes the same a part of this answer.

This defendant denies that by said plat or in any other way he dedicated to the public or in any manner parted with any right or interest in any part of said lands except such as by the said plat were laid out *and* for streets & alleys in said town. This defendant admits that he conveyed to the Chicago & Mississippi Railroad Co. a strip of land one hundred feet wide by deed, substantially as set forth in said bill, reference being had to the record of said deed for greater particularity, which is hereby made a part of this answer.

This defendant denies that by said plat or in any other manner he laid off or part of the depot-grounds in said town or dedicated to
305 the public the two pieces of ground in said bill mentioned, or either of them, or any part thereof; but, on the contrary, this defendant claims & alleges that the said two pieces of ground, and every part thereof, remained & still are the property of this defendant as fully and absolutely as if said plat had never been made & recorded.

This defendant further denies that the said pieces of land, or either of them, were ever accepted or used by the public, or that the defendant ever in any way acquiesced in any acceptance thereof by the public for the period of nine years or any other period.

This defendant admits that portions of said strips of fifty feet wide on the easterly side have, since the making of said plat, been more or less used by persons in the loading and unloading of grain, lumber, & merchandise on and from the trains of said railroad, and that parts thereof are still used for the purpose, amongst other things, of loading grain into cars upon the track of said railroad. This defendant says that said
306 last-mentioned strip has remained vacant and unoccupied, except as hereafter stated, until the present time, and this defendant has suffered other persons to pass over such vacant portions thereof, in order to get access to said cars; but he denies that by so doing he has waived any right or interest in said lands or in any way dedicated the same to public use. This defendant further says that portions of said easterly strip are occupied by permanent buildings, erected thereon without the consent of this defendant, to the exclusion of this defendant and all other persons, and that some of such buildings have been erected by the lisence and authority of said R. R. co., and in derogation of the just rights of this defendant. This defendant further says that said complainant, McWilliams, for several years before the commencement of this suit, occupied another portion of said strip with piles of lumber as a lumber-yard for his private business, to the exclusion of all other persons, and without the consent of this
307 defendant, and with knowledge that this defendant claimed the same as his undivided property, and said complainant, McWilliams, before and at the time of the commencement of this suit, with like knowledge, & without the consent of this defendant, occupied another portion of said strip with a building which still stands thereon to the exclusion of all other persons. This defendant further says that he has himself occupied other portions of said strip by buildings erected thereon & used by him from time to time for the space of about thirteen years, which buildings and occupation continued until about two years ago. This defendant further says that another portion of this strip is occupied by another building erected in 1868 by express license of this defendant & to the exclusion of all other persons. This defendant has always claimed & still claims that he is the absolute owner by patent from the United States of the whole of said strip, & as soon as he knew
308 of the erection of the buildings thereon by other parties he notified them of his claim. This defendant in like manner claims to be the owner of the strip on the westerly side of said r'road.

This defendant admits that complainants are owners of real estate fronting & abutting on East street, as laid down in said plat; but he denies that said complainants, or either of them, own any real estate fronting and abutting upon said depot-grounds or strip of land aforesaid, or that they have purchased the same since any dedication made by this defendant, or with special reference to said recorded plat, so far as the same refers to said strip of land.

This defendant admits that said McWilliams owns the several lots as stated in said bill, and has been in possession thereof for the times in said bill mentioned. Defendants also admits that said Hagerty owns the said lots as stated in said bill in that behalf, and has been in
309 possession thereof as therein mentioned. He also admits that complainants are buis'ness men in said town, doing buis'ness as merchants, on part of said block eighteen, but he denies that their buis'ness houses, or either of them, front said strip of land alleged to be dedicated; but, on the contrary, this defendant says that the buis'ness houses of both said complainants front on the easterly side of East street, & not elsewhere.

Defendant admits that at the time of filing this bill he was about to erect a building upon a portion of said strip, & was assuming acts of ownership & the rights of exclusive use of said strip adverse to the rights claimed in said bill by complainants, and of all other persons. But this defendant denies that he thereby abridged any rights or privileges lawfully possessed by said complainants, or either of them, in any lands owned by them. This defendant admits that the Chicago & Alton R. R. Co. are now operating & control'ing the road formerly ope-
310 rated, owned, & control'ed by said Chicago & Mississippi R. R. Co., but whether said Chicago & Alton R. R. Co. have succeeded to the rights of said Chicago & Mississippi R. R. Co. this defendant does not know, except as informed by said bill, & leaves said complainants to make such proof thereof as they may be advised.

This defendant denies that any right of user to said land, or any part thereof, was ever in said R. R. co., its successors or assigns, or that they ever had any right or interest therein.

This defendant admits that a large proportion of the business of said town is located on the easterly side of said r'road, but this defendant denies that any business of the complainants or any other persons is unlawfully interfered with or abridged, or the value of property fronting on East street depreciated by any acts or claims of this defendant.

This defendant admits that the building which he was about to erect when this bill was filed was almost immediately in front of the place of business of said Hagerty.

311 Wherefore this defendant, having fully answered said bill, humbly prays to be hence dismissed with his reasonable costs & charges in this behalf most wrongfully sustained.

RICH'D P. MORGAN, J'R.

W. H. BRADBURY, *Att'y for Def't.*

STATE OF ILLINOIS,
Livingston County, ss:

Of May term, 1871.

At a circuit court held in and for the county of Livingston, at the court-house in Pontiac, on the 24th day of May, A. D. 1871.

Present, the honorable Charles H. Wood, circuit judge of the 20th judicial circuit.

DAVID MCWILLIAMS, JAMES H. HAGERTY
vs.
RICHARD P. MORGAN, J'R.

This cause was this day brought on for hearing upon the pleadings and proofs taken and on file herein, and upon the evidence

312 taken in open court, and after hearing the proofs and allegations of the parties and the arguments of M'r L. E. Payson for the complainants, and M'r H. Spencer for the defendant, and having duly considered the same, this court doth order, adjudge, and decree that the injunction heretofore issued in this cause be, and the same is hereby, dissolved, and the bill of complainants filed in this cause be, and the same is hereby, dismissed at the costs of the said complainants.

CHA'S H. WOOD, *Judge.*

(A true copy.)

313 STATE OF ILLINOIS,
Livingston County, ss:

I, John A. Fellows, clerk of the circuit court in and for said county and the State aforesaid, do certify that the above & foregoing is a true, perfect, and complete copy of the original bill, answer, and final decree in a certain suit on the chancery side thereof in the Livingston County circuit court, wherein Daniel McWilliams and James Hagerty were complainants, and Richard P. Morgan, j'r, was respondent, as the same appears to me from the books and files of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Pontiac, this 22nd day of August, A. D. 1874.

[SEAL.] JOHN A. FELLOWS, *Clerk.*

314 And thereupon, after arguments by counsel, the court took the case under advisement. And afterwards, on the 23d day of June, the court entered a decree herein as more fully appears at another place in this record.

Thereupon the defendant Richard P. Morgan, j'r, prayed an appeal to the Supreme Court of the United States, which was allowed conditionally on filing a bond on or before September 1st, 1875. Bond filed August 31st, 1875. And inasmuch as the matters aforesaid do not otherwise appear of record, the defendant Morgan prays that the same may be embodied in a certificate of evidence, and that the same may be signed and sealed by the judge of said court, and the same certified as the testimony and proceedings in said cause, and it is done accordingly.

[SEAL.] H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Sept. 2, 1875. W. H. Bradley, cl'k.

315 And afterwards, to wit, on the 2d day of September, A. D. 1875, the following stipulation was filed in said court in said cause, to wit:

Stipulation as to record.

In the United States circuit court, northern district of Illinois.

ROBERT P. TANSEY
v.
RICHARD P. MORGAN, J'R, ET AL. } Original bill.

CHICAGO & ALTON R. R. CO.
v.
ROBERT P. TANSEY ET AL. } Cross-bill.

JOHN B. CAMPBELL
v.
ROBERT P. TANSEY ET AL. } Cross-bill.

It is hereby stipulated by John P. Wilson, solicitor for complainant in original bill and cross-bills, and Henry A. Gardner, j'r, solicitor for

defendant Richard P. Morgan, j'r, that the papers relating to the cross-bill of John B. Campbell, including answer of Campbell to original bill, filed June 27, 1873; cross-bill, filed June 30th, 1873; answer of
316 Morgan to cross-bill, filed Oct. 9, 1873; answer of Tansey, filed Aug. 6th, 1873; replication by Campbell, filed Aug. 6th, 1873; and deed of John Lathrop to the Chicago & Alton R. R., may be omitted from the transcript of the record in the matter of the appeal of Richard P. Morgan from the decree heretofore entered in said cause.

JOHN P. WILSON.
HENRY A. GARDNER, J'R.

CHICAGO, *Sept.* 2, '75.

(Endorsed:) Filed Sept. 2, '75. W. H. Bradley, clerk.

317 *Opinion of the Hon. Henry W. Blodgett, district judge.*

318 In the district court of the United States for the northern district of Illinois.

ROBERT P. TANSEY & RICHARD P. MORGAN, J'R, *vs.* THE CHICAGO AND ALTON RAILROAD COMPANY et al. } Bill.

THE CHICAGO AND ALTON RAILROAD COMPANY et al. *vs.* ROBERT P. TANSEY RICHARD P. MORGAN, J'R. } Cross-bill.

This is a bill filed by Tansey, the complainant, against the various defendants, setting forth that he is the owner of a fee-simple interest in (¼) one-quarter of two strips of land fifty feet wide lying along each side of the right of way occupied by the Chicago and Alton Railroad, where the same passes through blocks 15 and 18, in the town of Dwight, and alleging that Morgan, the Chicago and Alton Railroad Com-
319 pany, and one Campbell, claimed an interest in said land, praying that the interests of the respective parties might be ascertained and the lands in question partitioned, or, if partition was impracticable, that the lands might be sold and the proceeds divided according to their respective interests.

The railroad company answered the bill, and also by leave of court filed a cross-bill, in which it alleged, in substance, that in 1853 a certain corporation known as the Chicago and Mississippi Railroad Company was engaged in the location and construction of the railroad now owned by the said Chicago and Alton Railroad Company; that the defendant, Richard P. Morgan, was in the employ of said Chicago and Mississippi Railroad Company as its engineer; that one James Spencer and one Lathrop were also in the employ of said company as engineers under the said Morgan, and that Kersey H. Fell was acting as the land-
320 agent of said company in procuring the necessary lands for the use of said railroad for right of way and other purposes. That four contiguous forty-acre tracts of land were purchased from the U. S. Gov't, one by Morgan, one by Lathrop, one by Spencer, and one by said Kersey H. Fell and his brother Jessie, for the purpose of locating a R. R. depot & laying out a town thereon, it being the original intention of the parties to locate the line of said railroad so that a depot should be established at or near the center of said quarter-section, but

the nature of the ground was such that said line that it passed through only the 40 owned by Morgan, and it was decided to locate the depot upon the forty acres owned by Morgan; and for the purpose of equalizing the interests of the parties concerned, Spencer, Lathrop, and Fell conveyed their respective tracts to Morgan, who, in the month of August, 1853, conveyed by deed to said Chicago and Mississippi Railroad Company a strip of land one hundred feet wide through
321 said tract where said road was located, and upon which the same was built. Subsequently, and on or about the 30th of January, 1854, Morgan caused the said quarter-section of land to be plat'ed and subdivided into blocks and lots as the village of Dwight, and in making such plat there was a hexagonal strip two hundred feet wide and about 1,000 feet long laid off, including the right of way for said road, 100 f't wide, thereinbefore deeded to the company, between what was called East street and West street, and the said hexagonal strip was marked "Depot." The whole strip is enclosed between boundary-lines, and lying on the easterly and westerly side of said strip are streets laid out as part of said town-plat. Abutting on said streets upon the west side is block number 15, and abutting upon said street on the east side is block 18 of said plat, both of which are subdivided into lots. After the
322 lands had been subdivided, Morgan sold a few lots, and after that a division was made between himself, Spencer, Lathrop, and Fell, of the lots remaining unsold according to their supposed relative value, each party taking his lots without reference to his original ownership in the tracts they had formerly respectively owned. And the proceeds of the lots sold were divided among the four, share and share alike; the railroad company established its depot upon the premises in question, laid down the usual side tracks, and built the usual station-buildings for the purpose of transacting the business of the locality.

Subsequently the mortgages given by the railroad company upon its property and franchises were foreclosed, and the Chicago and Alton Railroad Company is now in possession of said road by virtue of purchases made under said foreclosure.

Some time about the year 1861 or 1862, Morgan set up a claim
323 to the extra width of fifty feet on each side of the original right of way, and in various forms has since asserted a claim to an exclusive ownership over these two strips of land. The railroad company has, however, continued to occupy the same to a greater or less extent for purposes connected with its depot, although Morgan has continued to assert a title thereto, and has made divers leases and conveyances to other persons of some portion of said strips.

The Chicago and Alton Railroad Company now claim by its cross-bill that the acts of Morgan and his associates amounted to a dedication of said two strips of land to the railroad company for railroad purposes, and the cross-bill insists that the alleged title of Morgan should be held to be void as against the complainant in the cross-bill.

It appears from the proof that Tansey, the original complainant, has bought the title of one of the original owners, and that the Chicago and Alton Railroad Company has also acquired the title of another
324 of the original owners, and it is admitted in behalf of the defendant Fell that by the subdivision made by Morgan, it was intended that the lands indicated as depot upon the plat should become the property of the railroad for the purpose of being used as depot-grounds.

It is, however, insisted on the part of Morgan that no act on his part, or of his associates, can be held to amount to a dedication of the said premises, and that he is in no way estop'ed now from setting up his legal

title as against the Chicago and Alton Railroad Company to the property in question.

It appears from the evidence, that shortly after the railroad in question was constructed, a track-book was made up in the office of said company, under the supervision of M'r Morgan, as engineer, in which the strips of land in question were dedicated and marked as the property of the company; that M'r Morgan, for several years after the construction of the road, was its general superintendant, and must have
325 had access to all its books and papers, and must have known of the fact that, on paper at least, there was an indication and assertion by and in behalf of the agents of this company that it was as much the owner of these two fifty-feet strips as it was of the 100-feet strip, described as right of way, which had been conveyed by deed to the company.

The evidence is to my mind very conclusive to show that it was the intention of Morgan and his associates, Spencer, Lathrop, and Fell, that this strip of land should become the property of the railroad company; and they are upon the town-plat, enclosing these strips of land within lines indicating that they are part and parcel of the tract owned by the railroad company, though said quarter-section seems to me a very strong circumstance indicating what the purpose of the owners of the property were at that time.

It is very evident to my mind that Morgan considered himself, and was so considered by his associates, as holding the quarter-section
326 of land in question in trust and for the benefit of himself and his three associates, in common, rather than as the separate owner in fee of any part of the quarter-section. This appears from the fact, that when they came to make the partition no one of the original owners was allotted his share upon his original tract, but each received their allotment according to the then supposed value, without reference to the original ownership, and the proceeds of the lots sold were equally divided, notwithstanding the original fee to the lot may have been entirely in one or the other of the parties in interest; and it was not until Morgan had ceased to have any official connection with the road, nor until the road had changed ownership, that he asserted any claim to or interest in these strips of land.

By the statutes of this State in force at the time the plat in question was made, (Revised Statutes of 1845, chapter 25, section 21,) it is provided, "the plat or map when made out, certified, acknowledged,
327 and recorded, as required by this division, and every donation or grant to the public or any individual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on said plat or map, shall be deemed in law and in equity a sufficient conveyance to vest the fee-simple of all such parcel or parcels of land as are therein expressed, and shall be considered, to all intents and purposes, as a general warranty against such donor or donors, their heirs or representatives, to the said donee or donees, grantee or grantees, for his, her, or their use, for the uses and purposes therein named, expressed, or intended, and for no other use or purpose whatever."

Now, the question is, Does this platting amount to a dedication? The language the statute is, "that every donation or grant to the public or any individual or individuals, religious society or societies, or any corporation or bodies politic, marked or noted as such on said plat or map, shall be deemed in law and equity a sufficient conveyance,"
328 etc. Here was a tract of land enclosed, one hundred feet wide, ly-

ing on each side of the center line of the Chicago and Mississippi Railroad, enclosed within lines marked "depot," with no line or marks to indicate that the 50-feet strip in question was owned in any different manner than the fifty-feet strip lying immediately next the center line, which had been deeded to the company. Indeed, the map conveys the idea to the eye and to the mind that the depot-grounds of this railroad on the town-plat in question are one thousand and four feet long and two hundred feet wide, and that they are bounded on one side by East street and on the other by West street. True, there is no express language upon the plat showing by itself an intention to donate these two strips of land in controversy to the Chicago and Mississippi Railway Company, but when you take into consideration the fact that the railroad is conceded to have been at the time of making this plat the owner in
329 fee of the strip fifty feet wide on each side of the center line, and that in making this plat no distinction is made between the original right of way and the increased width where the depot is indicated, I think the mind is led almost irresistably to the conclusion that the map itself indicates that the railroad company is as much the owner of these fifty-feet strips as of the one-hundred-feet strip, of which it was confessedly the owner. They are all enclosed in the same lines as outer boundaries. The whole is treated as entire, and it is absurd to suppose that this railroad company would have located and established a depot without its officers had been led to suppose that the depot-grounds indicated by this map had been in some way conveyed or donated to the company, or dedicated to its use of the depot-grounds.

On the 9th of October, 1867, a stipulation was made between Morgan of one part and the Chicago and Alton Railroad Company of the other, by which it was agreed that the matters in controversy between
330 said railroad company and said Morgan in reference to said strips of land should be submitted to the arbitrament and award of Judges Davis and Drummond, of this court; and after considering the fact substantially as they now appear before us, they awarded "that the grant made by M'r Morgan of the right of way to the railroad company in 1852, and survey, platting, and recording of the town of Dwight in 1854, the running of streets along the disputed strips of land, and the laying off of lots abutting on the same and fronting on the railway in the manner set forth in said plat and record, together with the conduct of M'r Morgan touching said strips and lots since the year 1854, do constitute a dedication of the same to the public." The learned judges to whom this matter was submitted gave no opinion at that time as to whether this was a dedication which vested the fee in the railroad company or in the corporate authorities of the town of Dwight. The'
331 simply contented themselves with finding that it was a dedication to the public, undoubtedly assuming that if the property belonged to the public it would be used for the purpose for which it was intended, namely, that of public depot grounds, to be used in connection with the operation and management of this railroad company for railroad purposes. The supreme court of this State, in McWilliams against Morgan, 61st Illinois, 89, says, however, that the acts of Morgan did not constitute a dedication to any one, so that we have a conflict of opinion between the Federal judges, acting as umpires and arbitrators, and the supreme court of this State, upon the question of the legal effect of this platting. This court is not, however, bound to assume that the case before the State court was precisely the same in its facts as is shown here.

Under these circumstances I think this court fairly bound by the adjudication made upon substantially the same facts by the justices of the

supreme court and the judge of this circuit. It is certainly the higher authority, so far as this court is concerned.

332 There is another feature of this case, however, that even if the view which I am inclined to take was not sustained would, it seems to me, entitle the complainant to relief.

As I have already indicated, the proof shows conclusively that when Morgan received the fee-simple of that entire quarter-section he held the whole tract in trust for the benefit of his associates in the enterprise of platting and laying out the town Dwight; not only did he hold the three forty-acre tracts which were formerly owned by Spencer, Lathrop, and Fell, as trustee, but I think his own tract became also trust property in his hands, and he held the legal title to the whole quarter section for the benefit of the four owners in common. And this trust has continued. The lots resulting from the subdivision remaining unsold were divided among the various owners, but that does not indicate an intentions on the part of the other parties in interest to leave the fee-simple to

333 these two fifty-feet strips for Mr. Morgan in his own benefit. I think he has charged himself with a trust so far as the fee-simple of these strip' are concerned; and if it should be held that the complainant is not entitled to the first relief prayed for by its cross-bill, that is, an injunction against Morgan for asserting any title to the land in question by reason of the dedication of the same with the consent of the co-owners, then it is entitled to a partition of the land among the various parties in interest.

Morgan may possibly, in the light of the decision of the supreme court, be held to own the fee-simple of the fifty-feet strips, but he holds these strips for the benefit of himself, Lathrop, Spencer, and Fell.

334 existence of the trust the party should have the relief which he prays in his bill, and the property should be conveyed to the respective owners according to their interests; and in case it is not susceptible of division, should be sold for their common benefit.

335 But as I consider the fact of dedication to be established by the proof, I think the complainant in the cross-bill entitled to a decree on that ground.

336 *Appeal-bond.*

Know all men by these presents that we, Richard P. Morgan, j'r, Henry A. Gardner, j'r, Oliver H. Lee, and R. E. Goodell, and of the State of Illinois, are held and firmly bound unto the Chicago and Alton Railroad Company, of the same State, in the penal sum of two thousand dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our hands and seals this 21st day of August, A. D. 1875.

The condition of the above obligation is such, that whereas the said Chicago and Alton Railroad Company did, on the 23d day of July, A. D. 1875, in the circuit court of the United States for the northern district of Illinois, and of the July term thereof, 1875, recover a decree against the above-bounden Richard P. Morgan, j'r, and others, as the said decree described, from which said decree of the said court the said Richard P. Morgan, j'r, has prayed an appeal to the Supreme Court of the United States:

Now, therefore, if the said Richard P. Morgan, j'r, shall prosecute his said appeal with effect, and, moreover, perform and abide by the decree

and decision rendered and to be rendered against him in case the
337 said Supreme Court shall affirm the said decree, or, in case he shall fail to make his plea good, shall answer all costs and damages occasioned by said appeal, then the above obligation to be void; otherwise to remain in full force and effect.

RICH. P. MORGAN, JR. [SEAL.]
JAMES G. STRONG. [SEAL.]
R. E. GOODELL. [SEAL.]
HENRY A. GARDNER, JR. [SEAL.]
OLIVER H. LEE. [SEAL.]
GEORGE C. MORGAN. [SEAL.]

(Endorsed:)
Approved.

THOMAS DRUMMOND.

Filed August 31, 1875.

W. H. BRADLEY, *Clk.*

338 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings in the cause wherein Robert P. Tansey was the complainant and Richard P. Morgan, jr, and others were the defendants, as the same appears from the records of said court now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 9th day of October, A. D. 1875, and of our Independence the 100th year.

[SEAL.] WM H. BRADLEY, *Clerk.*

(Indorsement on cover:) No. 238. Richard P. Morgan, jr. appellant, *vs.* The Chicago and Alton Railroad Company. N. Illinois C. C. U. S. Filed 16 October, 1875.